

**Regular Meeting – Plan Commission/Zoning Board of Appeals
Gregory J. Bielawski Municipal Center, DuPage County, Carol Stream, Illinois**

All Matters on the Agenda may be Discussed, Amended and Acted Upon

December 12, 2016

Chairman Frank Parisi called the Regular Meeting of the Combined Plan Commission/Zoning Board of Appeals to order at 7:00 p.m. Chairman Parisi directed Jane Lentino, Community Development Secretary, to call the roll.

The results of the roll call were:

Present: Commissioners David Creighton, Angelo Christopher, Frank Petella, Dee Spink, Charlie Tucek, and Chairman Frank Parisi.

Absent: Commissioner Meneghini.

Also Present: Joseph Breinig, Village Manager, Donald Bastian, Director of Community Development, Tom Farace, Planning and Economic Development Manager, Village Attorney James Rhodes, Mike Zimmerman, Special Counsel to Staff, Jane Lentino, Community Development Secretary, and a representative from DuPage County Court Reporters.

MINUTES:

Commissioner Creighton moved and Commissioner Christopher made the second to approve the minutes of the meeting of November 28, 2016.

The results of the roll call vote were:

Ayes: 6 Commissioners Creighton, Christopher, Petella, Spink, Tucek and Chairman Parisi.

Nays: 0

Abstain: 0

Absent: 1 Commissioner Meneghini

PUBLIC HEARING:

Commissioner Spink moved and Commissioner Petella made the second to open the Public Hearing.

The motion passed by unanimous vote.

Case # 16-2079 – Village of Carol Stream – 130 E St. Charles Road

Special Use Permit for a Public Service Use

Special Use Permit for Outdoor Activities and Operations

Amendment to a Special Use Permit for a Planned Unit Development

Chairman Parisi requested Mr. Farace's comments.

Mr. Farace stated that the Village is seeking a continuance and that because of the Village Hall expansion, that the Village is looking at temporary facilities, one at 130 E. St. Charles, which is still being

evaluated. Mr. Farace stated the Village did publish the public notice in anticipation of the hearing at this meeting for the request, but a continuance is requested until the January 23, 2017, meeting.

Commissioner Spink moved to approve and Commissioner Creighton seconded the motion to continue this case to January 23, 2017.

The motion was passed.

The results of the roll call vote were:

Ayes: 5 Commissioners Creighton, Christopher, Petella, Spink, and Tucek.

Nays: 0

Abstain: 1 Chairman Parisi.

Absent: 1 Commissioner Meneghini

Case # 16-2080 – Village of Carol Stream – 295 N. Kuhn Road

*Termination of Special Use Permit
Zoning Map Amendment (B-3 to R-1)*

Chairman Parisi turned the meeting over to Village Attorney, Jim Rhodes, to go over procedures.

Mr. Rhodes stated that this meeting was a public hearing to consider the request of the Village of Carol Stream to terminate the Special Use Permit, previously granted to Organic Soils for a landscape waste transfer facility on a parcel of property located at the northeast corner of Kuhn Road and McNees Drive in the Village of Carol Stream, and to rezone the property back to R-1 One Family Residence District. He stated that the purpose of the hearing was to hear public testimony and to receive evidence with respect to the proposed termination of the Special Use, and then to determine whether the Special Use should be terminated as provided within the Special Use ordinance, specifically Section 16-15-8(H) of the Zoning Code and to Rezone the property back to R-1. He stated that the purpose of the hearing was not to hear any evidence, or testimony, with respect as to whether the Special Use should be permitted on the site, as that issue had already been determined over two years ago, and that this issue was strictly for whether or not the Special Use should be terminated in accordance with the provisions in the Village's zoning code.

Mr. Rhodes stated that the hearing would proceed in the following manner in accordance with the procedures with the Carol Stream Plan Commission:

The petitioner will be allowed to present testimony, introduce any evidence in support of termination of the Special Use and Rezoning.

All interested parties will be given the opportunity to ask questions of any Village witnesses. Those interested parties will include the respondent, Organic Soils, and any other individuals in the audience with specific questions.

After each petitioner's witnesses are done, the Plan Commission may ask questions of any of the witnesses regarding the testimony that was presented.

After the Petitioner has completed his case, the Respondent, Organic Soils, may provide testimony and evidence they wish to provide, with respect to the Special Use Termination and Rezoning.

The Petitioner and any interested parties will be given the opportunity to ask questions of any witnesses. Mr. Rhodes stated that questions of the witnesses must relate to the testimony that the witness has

given, and then the Plan Commission will be allowed to ask questions regarding the evidence and testimony provided.

After Organic Soils has provided its case, any other interested parties will be given the opportunity to present witnesses or evidence with respect to the Special Use termination and Rezoning, with respect to the granting or denial of that request by the Village.

The Petitioner and Organic Soils will be given the opportunity to question any of those interested parties who may provide any testimony and evidence, and the members of the Plan Commission will be allowed to ask questions regarding the evidence or testimony presented.

The Petitioner may present any rebuttal to the interested parties, and Organic Soils may present any rebuttal to the interested party's evidence.

Thereafter, the Petitioner will have the opportunity to provide a rebuttal or any additional information with respect to the case in whole.

The Plan Commission will then deliberate its decision after the Petitioner and Organic Soils are allowed to make any type of closing statement.

The Plan Commission will make its recommendation to the Village Board.

There will be a written decision that's prepared, which includes findings of fact and the Plan Commission's recommendation, which will be forwarded to the Village Board for legislative action with respect to the recommendation.

The Chair may impose reasonable limitations on evidence and testimony, such as time limits, barring repetitious, irrelevant, or immaterial testimony. All testimony must be relevant to the termination of the Social Use and Rezoning of the property.

The chair will rule on admissibility of evidence, which may be overruled by the majority of the Plan Commission.

Mr. Rhodes asked that individuals attending the public hearing maintain an orderly and civil hearing, and to refrain from making any comments/statements during witness testimony or questioning.

Mr. Rhodes stated that there are sign in sheets at the back of the board room on the table, for anyone who wishes to provide testimony with respect to the public hearing, and that there were two individuals who signed in.

Mr. Rhodes asked counsel for the Village and Organic Soils to identify themselves for the record. They are as follows:

Mike Zimmerman, Special Counsel for the Village of Carol Stream.

Robert McNees, 195 Hiawatha Drive, on behalf of Organic Soils.

Mr. McNees stated that, because he intended to give testimony, Mark Daniel, Special Counsel for Organic Soils, was with him as well.

Mr. Rhodes asked Mr. Zimmerman for an opening statement.

Mr. Zimmerman stated that he had documentary exhibits to hand out prior to the beginning of testimony.

Mr. McNees stated that he did not know who the petitioner was and that he did not have an application that was filed in the request.

Mr. Zimmerman stated that the petitioner was the Village of Carol Stream.

Mr. McNees asked if there was a written petition or if it was just by direction of the Village Board.

Mr. Bastian stated that the Mayor and the Village Board of Trustees are the petitioners, and that there is an application in the packet and on the Village's website.

Mr. McNees asked if there was a copy of the application submitted to Organic Soils.

Mr. Bastian stated that there was not an application submitted to Organic Soils.

Mr. McNees asked for a copy of the application.

Mr. Zimmerman stated that he was ready to begin barring anything unusual in the two page application and that the Village was testifying first.

Mr. McNees agreed.

Mr. Zimmerman stated that this case was about the termination of Special Use for a landscape waste transfer facility on Village owned property. He stated that the ordinance granting the Special Use was adopted by the Village Board on August 18, 2014. Mr. Zimmerman stated that the documentary evidence, and the testimony, will and does show that from August 18, 2014, until today there has been no commencement of construction of the facility, and no issuance of a Village permit for construction, notwithstanding that the applicant has had an IEPA construction permit since May 27, 2015, and concluded his opening statement.

Mr. Zimmerman called Don Bastian as the first witness for the Village.

Mr. McNees asked Mr. Zimmerman if he intended to introduce evidence through Mr. Bastian.

Mr. Zimmerman stated that they were self-authenticating public records, and asked they be admitted because they have all been generated or received by the Village of Carol Stream in the course of its handling of this permit application and that there were five different sets of documents and would itemize them for the court reporter. Chairman Parisi agreed.

They are as follows:

Exhibit #1 is the May 27, 2015, IEPA permit.

Exhibit #2 is the January 13, 2016, letter from Mr. Joseph Breinig, from the Village of Carol Stream, to Mr. David Gravel, Organic Soils Incorporated.

Exhibit #3 is a set of two letters on Organic Soils Inc. letterhead, both dated January 21, 2016. The first letter is addressed to Mr. Joseph Breinig, Village Manager, the second is addressed to the Board of Trustees, dated January 21, 2016.

Exhibit #4 is three letters, the first dated April 22, 2016, from Joseph Breinig to David Gravel, Organic Soils. The second is an April 15, 2016, letter from David Gravel to Mr. Joseph Breinig. The third is a letter dated September 9, 2013, letter from the Village of Carol Stream, signed by Mr. Donald T. Bastian, addressed to Mr. Don Oppermann and Mr. David Gravel.

Exhibit #5 is a letter from McNees and Associates, signed by Mr. Robert McNees, dated October 10, 2016, addressed to Mayor Saverino and the Board of Trustees of the Village of Carol Stream.

Mr. Rhodes asked Mr. McNees if he had any objection to the introduction of the letters. Mr. McNees did not, subject to cross-examination, and the letters were admitted as documentary evidence.

Mr. Rhodes stated that, if there was no objection, a narrative testimony from all parties is preferred, except on cross-examination where Q and A is necessary to fill in gaps.

Mr. McNees agreed with Plan Commission proceedings.

Chairman Parisi swore in Mr. Donald Bastian, 500 N Gary Avenue, Mr. Robert McNees on behalf of Organic Soils, Don Oppermann, Organic Soils, Steve LaPorte, 140 Arrowhead, and Frank Cerwin, 357 Shelburne Drive. Chairman Parisi asked Mr. Bastian to proceed.

Mr. Bastian stated that in August, 2014, the Village Board approved ordinances granting a Zoning Map Amendment and a Special Use Permit to allow Organic Soils to operate a landscape waste transfer facility on Village owned property at the northeast corner of Kuhn Road and McNees Drive, and entered into a lease agreement with Organic Soils to establish terms and conditions under which the Village would lease the property to Organic Soils. He stated that the Zoning Code requires construction of Special Uses to commence within 18 months from the date of approval of the Special Use, and that, in the case of the landscape waste transfer facility, construction did not begin during the initial 18 month period following the date of Special Use approval.

Mr. Bastian stated that on January 21, 2016, Organic Soils submitted a letter to the Mayor and the Board of Trustees requesting an extension of the Special Use, noting that the Zoning Code permits the Board to grant an extension. At the meeting on February 1, 2016, the Village Board granted a six month extension until July 31, 2016. Mr. Bastian stated that construction did not commence within the six month extension period. Mr. Bastian noted that construction would include storm sewer system, including drainage pipes and structures, retention facility, wetland mitigation area, and a flood plain compensatory storage area, as well as a water service to the property, asphalt entrance driveway, vehicle parking and maneuvering area for transfer trailers, contractor vehicles, packer trucks, front end loader, concrete block containment bin, above ground fuel tank, transfer trailer loading ramp, double wall perimeter fencing, entrance signage and gates, video surveillance system, portable office trailer, site lighting, and site landscaping improvements.

Mr. Bastian stated that in a letter dated July 8, 2016, Organic Soils requested a second extension of the Special Use until April 30, 2017. In considering the second request for an extension, Staff had concerns that Organic Soils was not making progress in obtaining the permits and approvals necessary to construct and operate a landscape waste transfer facility in the almost two year period since the approval of the original Special Use, and that it was unknown if more extensions might be needed before construction would, in fact, begin.

Mr. Bastian stated that at the July 18, 2016, meeting, the Village Board did not grant the request for the Special Use extension, but instead, Staff was directed by the Board to work with Organic Soils on an amendment to the lease agreement that would provide specific milestones for commencement of construction, payment of rent, and initiation of operations. Organic Soils' proposal suggested that the date for commencement of construction be established as June 1, 2017.

Mr. Bastian stated that a draft agreement was on the Village Board agenda for the November 7, 2016, meeting, and instead of taking action on the amendment to the lease agreement, the Board directed Staff to prepare a memo for the November 21, 2016, Village Board agenda outlining the procedure for termination of a Special Use for the landscape waste transfer facility to be considered by the Village Board. At the meeting on November 21, 2016, Village Board directed Staff to begin the Special Use permit termination process.

Mr. Bastian stated that, per the Zoning Code section 16-15-8(H)(2), the Plan Commission is to hold a public hearing with regard to whether any of the conditions described in Section H-1 exist, noting that the condition in H-1(a) which is failure to commence construction of the proposed use within 18 months from and after the date of the granting of the permit. Mr. Bastian noted that construction is not deemed to commence unless and until all necessary permits have been obtained and the site has been properly graded, foundations and footings are in place, and all utilities have been provided for, as outlined on the approved plans attached to the Special Use ordinance.

Mr. Bastian stated that Staff believes that there can be no question that construction did not begin within the 18 month time frame per the Zoning Code, and also did not begin in the six month extension granted by the Village Board, which ended July 31, 2016, and that commencement of construction had not begun in the four months since the extension expired. Mr. Bastian noted that the Village has done nothing to impede the project since the approval of the Special Use.

Mr. Bastian stated that, based upon the facts, Plan Commission should recommend to the Village Board that the Special Use Permit granted to Organic Soils through Ordinance 2014-08-44, and extended by Ordinance 2016-02-06, should be terminated, and that the property be rezoned from B-3 Service District to R-1 One Family Residence District.

Mr. Zimmerman asked Mr. Bastian to clarify that the first concept plan was presented by Organic Soils on July 1, 2013.

Mr. Bastian answered that in July of 2013, a concept plan was presented at a combined workshop at Village Hall attended by Plan Commission and Village Board members.

Mr. Zimmerman asked Mr. Bastian to clarify that on August 18, 2014, the Village Board unanimously approved the Special Use for the landscape waste transfer facility.

Mr. Bastian stated that was correct.

Mr. Zimmerman asked Mr. Bastian to clarify that on May 27, 2015, the IEPA issued its permit to construct the facility.

Mr. Bastian stated that was correct.

Mr. Zimmerman asked Mr. Bastian to clarify that in fall of 2015 there was no construction at the site.

Mr. Bastian stated that was correct.

Mr. Zimmerman asked Mr. Bastian if it made sense that there was no construction at the site after the IEPA issued its permit.

Mr. Bastian stated that it made sense that there was no construction.

Mr. Zimmerman asked Mr. Bastian to clarify that on January 13, 2016, Mr. Breinig sent a letter to Organic Soils asking the status of the project.

Mr. Bastian stated that was correct.

Mr. Zimmerman asked Mr. Bastian to clarify that on January 21, 2016, Organic Soils asked, formally, for an extension of the 18 month construction period.

Mr. Bastian stated that was correct.

Mr. Zimmerman asked Mr. Bastian to clarify that they were granted an extension, by ordinance, in February 1, 2016.

Mr. Bastian stated that was correct.

Mr. Zimmerman asked Mr. Bastian to read Section 3 of Ordinance No. 2016-02-06 out loud, which stated that "failure to commence construction on or before July 31, 2016, may result in initiation of the process for termination of the Special Use permit granted in Ordinance No. 2014-08-44, said process for termination in Section 16-15-8(H) in the Carol Stream Code of Ordinances."

Mr. Zimmerman asked Mr. Bastian if his job oversees the review and issuance of building permits.

Mr. Bastian stated that was correct.

Mr. Zimmerman asked Mr. Bastian is he was aware of whether Organic Soils had ever submitted a full and complete set of construction drawings for the facility.

Mr. Bastian stated that a full and complete set of construction drawings has not been submitted.

Mr. Zimmerman asked Mr. Bastian if he was ever given an explanation as to why no plans had been submitted.

Mr. Bastian stated that he was never given an explanation.

Mr. Zimmerman asked Mr. Bastian is he was aware of any issues regarding a wetlands delineation.

Mr. Bastian stated that he was aware that in a concept plan review from the fall of 2013, the Village Staff review letter advised Organic Soils that a wetland delineation should be done to determine if there are wetlands on the property, since the presence of wetlands can have an impact on the approval process in the agencies from which approvals are required.

Mr. Zimmerman asked Mr. Bastian if he knew if there were wetlands on the property.

Mr. Bastian stated that it is his understanding that there are wetlands on the property.

Mr. Zimmerman asked Mr. Bastian if the applicant or his representative ever informed him as to when the applicant claims to have found out that there are wetlands on the property.

Mr. Bastian stated that he did not have a specific date, but it has been a topic of discussion.

Mr. Zimmerman referred to the April 15, 2016 letter in Village's Exhibit #4, and asked Mr. Bastian if that letter refreshed his memory as to whether the applicant ever told the Village when it claimed it learned of a wetlands issue, and what the date was.

Mr. Bastian answered yes, March 28, 2016.

Mr. Zimmerman asked if in the September 9, 2013, letter, he informed Organic Soils that he believed a wetlands delineation or study was appropriate for the site, and where it appears in the letter.

Mr. Bastian said yes, and that the information appeared in comment 4f, on page 3 of the letter, referencing the DuPage County Storm Water Ordinance Article XI, and that the letter was dated September 9, 2013.

Mr. Zimmerman asked Mr. Bastian to clarify that his letter was sent September 9, 2013, and that the wetlands delineation was not done until May of 2016, and Mr. Bastian stated that he believed that was correct.

Mr. Zimmerman had no more questions for Mr. Bastian, reserving rebuttal.

Chairman Parisi thanked Mr. Zimmerman and asked Organic Soils if they had any questions.

Mr. McNees asked Mr. Bastian if he was familiar with the July 14, 2016, 4 page interdepartmental memo provided to him that Mr. Bastian sent to Mr. Breinig chronicling the steps from May, 2013, to July 8, 2016, and if it accurately reflects Mr. Bastian's records of the steps that were part of the process during that time period.

Mr. Bastian stated that he was familiar with the memo, and that the memo was intended to be a summary of key events during the project.

Mr. McNees asked Mr. Bastian if the memo would show applications for site engineering or revisions.

Mr. Bastian stated that the memo showed that on November 2015, partial site improvement engineering plans for the facility were submitted to the Engineering Services Department.

Mr. McNees asked Mr. Bastian if it showed any other revisions that were made to the plan, or any back and forth between the Village Engineering staff and Organic Soils.

Mr. Bastian stated that comments were provided to Organic Soils on March 28, 2016.

Mr. McNees asked Mr. Bastian if he agreed about the permit that was issued by the IEPA on May 27, 2015, to construct a facility, is a pertinent deadline.

Mr. Bastian agreed that was when the IEPA issued the permit.

Mr. McNees asked Mr. Bastian to clarify that his understanding of the law that Organic Soils could not have started construction prior to getting the IEPA permit to construct.

Mr. Bastian agreed.

Mr. McNees asked Mr. Bastian if, in addition to the IEPA permit, Organic Soils had to provide required site engineering work to the Village to see that the pad, the building, the lighting are done correctly, that there is stacking space for trucks, prior to the start of construction.

Mr. Bastian agreed.

Mr. McNees asked Mr. Bastian to clarify that November 2015, that partial site and engineering plans were submitted by Organic Soils to Engineering Services.

Mr. Zimmerman asked Mr. McNees to clarify that he was referring to the year 2015.

Mr. McNees clarified the timeline that he was referring to as May 27, 2015, the IEPA permit; the next step would be November of 2015, partial site engineering and improvement plans are submitted to the Village, and asked Mr. Bastian if that was accurate based on his understanding of the files of the Village.

Mr. Bastian said yes.

Mr. McNees asked Mr. Bastian if part of the plans included storm water engineering, and if the storm water plans included provisions for wetlands at that time.

Mr. Bastian stated that he did not have that set of plans in front of him, but that it sounded reasonable for the submittal to include storm water plans, and that he would have to check the file for wetland provisions.

Mr. McNees asked Mr. Bastian if it was true that it wasn't until March 28, 2016, that the Village's consulting engineer, Chris Burke, first advised in response to the storm water application, that the Village believed there was a wetlands issue.

Mr. Bastian stated that he could not confirm that information.

Mr. McNees asked Mr. Bastian if he was aware if any prior communication between Burke Engineering and Organic Soils that would have indicated that there was a wetlands problem prior to March 28, 2016.

Mr. Bastian stated that he was not aware if there was or was not any communication.

Mr. McNees stated that within about a month or so after March 28, 2016, Organic Soils consulting engineer came to the same conclusion as Burke regarding the wetlands issue, and asked Mr. Bastian if it was true.

Mr. Bastian said that it is possible that they may have done that.

Mr. McNees asked if Mr. Bastian was familiar with the fact that they concluded that, but didn't know when.

Mr. Bastian stated that the matter of storm water management is handled by the Engineering Department, and that they would have focused on dates and correspondence very closely.

Mr. McNees asked if the Village was a full waiver community. Mr. Bastian said that it was.

Mr. McNees asked to make it clear in the record that February, 24, 2016, Organic Soils submitted the initial storm water report and revised engineering plans; March 28, 2016, the Village Engineers say there is a wetlands issue, and that it is all part of the storm water review, and asked Mr. Bastian if that was correct. Mr. Bastian said that it was.

Mr. McNees asked if it was true that on April 15, Organic Soils advised the Village that, according to prior maps, there were no wetlands on the property, and they proceeded accordingly up until that time. Mr. Bastian said yes.

Mr. McNees stated that Organic Soils filed an application in with the Army Corps of Engineers to review the wetlands, and asked Mr. Bastian if that was correct. Mr. Bastian said he believed that was correct.

Mr. McNees stated that the application was filed after Mr. Bastian's chronology, which ended on July 8, 2016.

Mr. Bastian stated that the chronology attached to the staff report, posted on the Village's website, ends on November 21, 2016.

Mr. McNees asked if, to the best of Mr. Bastian's knowledge, that the Army Corps of Engineers application date was on, or about, July of 2016.

Mr. Bastian stated that he did not know the date.

Mr. McNees asked Mr. Bastian if he recalled the Village Board meeting on October 17, 2016, when he went before the Board and made a proposal for revisions to the draft amended lease and filed a supplemental request for the extension of the Special Use Permit, and the Village Board directed Staff to work out the terms an amended lease, concerning firm deadlines, and a start date for rent. Mr. Bastian said he did.

Mr. McNees asked Mr. Bastian if it was correct that he and Mr. Bastian met and hammered out a proposed amended lease to give to the Board at the November 7th meeting. Mr. Bastian said that was correct.

Mr. McNees asked if Mr. Bastian recalled that prior to the November 7, 2016, meeting, Organic Soils indicated that they were prepared to file all of the permit applications necessary to complete the project.

Mr. Bastian stated that they had a meeting scheduled.

Mr. McNees asked Mr. Bastian if it was correct that the pre-submittal meeting was at the Village's request so that all applications could be submitted at one time so that all questions could be dealt with, instead of filing piece meal permit applications.

Mr. Bastian stated the Village offered that type of meeting to Mr. McNees and Organic Soils to try to assist and get the project back on track because of some of the difficulty that they had been having in putting permit applications together and making progress on permits.

Mr. McNees agreed with Mr. Bastian and asked if it was correct that Organic Soils tried to schedule the pre-submittal meeting before the November 7th meeting, but couldn't get it scheduled until after.

Mr. Bastian said that he believed the meeting was scheduled for November 9th.

Mr. McNees asked if Mr. Bastian recalled, and if it was correct that, at the November 7th Village Board meeting, Organic Soils brought the signed amended lease, and attempted to tender the rent and lease to the Village Board, and instead of accepting, the Board directed Staff to explain the procedure for termination of the Special Use Permit.

Mr. Bastian said it was correct.

Mr. McNees went on to state that the explanation of the termination procedure was given to the Board and at the November 21st meeting the Village Board voted to send the matter to the Plan Commission for termination hearing. Mr. Bastian said more or less, yes.

Mr. McNees asked Mr. Bastian if it was true that, after the November 7th Village Board meeting, Organic Soils called Mr. Bastian saying that there was no point in proceeding with the pre-submittal meeting if the Village is going to terminate the Special Use permit. Mr. Bastian said yes.

Mr. McNees continued to state that Organic Soils indicated to the Village that it would not be necessary to spend any more time viewing the storm water submittal due to the Village Board's position at the November 7th meeting.

Mr. Bastian stated that he has knowledge of the conversation which took place with either Mr. McNees or someone from his team and the Village's Engineering Department.

Mr. McNees asked that from that point on, when Mr. Bastian said that the Village hasn't impeded Organic Soils, would he say that from the November 7th Board meeting on, there has been no reason to submit additional permit applications because of the Village Board's position.

Mr. Bastian asked if it was a two part question, then stated that the Village did not impede anything, that it was Organic Soils' decision to stop work on submittals because of Village Board decision.

Mr. McNees asked Mr. Bastian if it was correct that construction could not begin without the IEPA permit, an approved set of site engineering plans, Army Corp of Engineers approval, and other listed permits. Mr. Bastian said yes, that was correct.

Mr. McNees asked if Mr. Bastian was aware that the Army Corps of Engineers application has been filed, and in the Village's experience, how long it can take to review that application.

Mr. Bastian said that he was aware that the application had been filed, but he doesn't process or review those applications, directly, but it had been discussed that it can take 6 to 9 months.

Mr. McNees asked if it was correct that Village could not issue its permits until the Army Corps of Engineers reviews its permits, and that Organic Soils could not start without the Army Corps of Engineer's permit. Mr. Bastian said that was correct.

Mr. McNees referred to a September 9, 2013, written letter by Mr. Bastian, advising Organic Soils to look at a wetlands issue and that a wetland delineation report would be needed (Exhibit 4 Subsection F on page 3), and asked Mr. Bastian if he was aware of what the County maps show regarding wetlands on the property.

Mr. Bastian said no.

Mr. McNees asked if it was correct that since Mr. Bastian was not aware of what the County map shows, that he could not comment on the Organic Soils' belief that the map showed no wetlands on the property.

Mr. Bastian stated that he could not comment on what the County map showed.

Mr. McNees noted that Mr. Bastian's letter requested a wetland delineation, and asked if a wetland delineation would only be needed if there was wetlands on the site.

Mr. Bastian stated that the comment in the letter says a wetland delineation report would have to be provided.

Mr. McNees asked Mr. Bastian if he was aware of a wetland on any Village or County map with respect to this property, and asked if there were County maps that are maintained for wetlands that are maintained by the County.

Mr. Bastian stated that he was not aware that there is a map that does or does not show a wetland on the property at that time, and that are a variety of maps that show wetlands, and does not believe that they are maintained by the County.

Mr. McNees asked if Mr. Bastian knew what the County Storm Water Department refers to in looking at wetlands.

Mr. Bastian stated that the issue would best be addressed by the Engineering Department.

Mr. McNees asked if there were any Village Engineers in the room. Mr. Bastian said there were not.

Mr. McNees asked if, at any time, Mr. Bastian received any communication from Organic Soils or evidence indicating their intent to abandoned the project. Mr. Bastian said no.

Mr. McNees asked if Mr. Bastian had any idea how much Organic Soils has spent so far on this project. Mr. Bastian said no.

Mr. McNees asked Mr. Bastian if he was aware of any change in condition on the property between the time the Special Use permit was issued on August 18, 2014, and today.

Mr. Bastian mentioned that there was six inches of snow on it, but no other changes.

Mr. McNees stated that Mr. Bastian provided a Staff report to the Plan Commission in this matter for this hearing, and prepared finding of facts, and asked if it was correct that the Staff reports stated on page 5 in point 3, there are no change in conditions upon the property that are applicable to this matter, and in Section 2, it was noted that Staff was not aware of any other relevant circumstances in this case. Mr. Bastian said it was correct.

Mr. McNees had no further questions.

Chairman Parisi asked Mr. Zimmerman for further questions for Mr. Bastian. Mr. Zimmerman had none.

Chairman Parisi asked for questions from the audience for Mr. Zimmerman or Mr. Bastian.

Mr. Steve Laporte, 140 Arrowhead, asked Mr. Bastian if any authority in the lease granted to the Village to abate a situation in which landscape waste is allowed to stay for so long that it begins to smell.

Chairman Parisi reminded Mr. LaPorte that Mr. Rhodes' statement that order of the Plan Commission was to determine if the termination of the Special Use Permit is warranted, and the original Special Use in 2014 already identified that issue, and that the question was irrelevant to the hearing.

Chairman Parisi asked Mr. Zimmerman if there were any other witnesses.

Mr. Zimmerman said not now, but reserved the right to call witnesses in rebuttal.

Mr. Zimmerman asked for any witnesses from the Respondent.

Mr. McNees stated that, as he understands it, that this hearing is like a trial and the Plan Commission is like the judges and he didn't feel that he should have to put on a case and made a technical motion that the application to terminate the Special Use under Section H, be withdrawn on the basis that there has been insufficient evidence presented by the Petitioner, and asked the Plan Commission to rule in that favor. Mr. McNees said that they are not contesting that the deadline, or the extended deadline to commence construction had not been attained, and there are applications to extend the deadline, but that in addition to the Ordinance saying the construction deadline finding is required, the Ordinance also says "and other circumstances" in order to terminate. Mr. McNees said that, other than failure to commence construction, there were no other circumstances presented to the Plan Commission that would warrant termination of the Special Use Permit. Mr. McNees stated that in addition, he believes, legally, the Petitioner would need to show that there is in intent to abandon the project and there is no testimony of that, and the only thing that is out there is the argument about the wetlands issue and whether or not it should have been addressed earlier.

Mr. Zimmerman reminded the Plan Commission that this is a legislative hearing as the Village Board will be called upon to adopt a piece of legislation and ordinance which repeals a prior ordinance, that the Plan Commission were not judges and that this is not a trial, but they would be called upon to

make recommendations. Mr. Zimmerman stated that there are four circumstances which revocation of a Special Use is clearly appropriate and what they are proceeding on is letter 'A', failure to commence construction of the proposed use within 18 months from and after the date of granting the permit, and that Mr. McNees is not contesting that, but that the statement in the following paragraph that uses the word 'and' instead of 'and/or' or just 'or'. Mr. Zimmerman clarified that all it means is that the Commission shall hold a public hearing with regard to whether any of the described conditions in H1, lettered A through D, exist, and whether because of the conditions, and other circumstances, the Special Use Permit shall be terminated. Mr. Zimmerman stated that Mr. McNees was trying to make an unknown element a part of the Board's decision, and an unknown element was not part of the Village Board's decision. Mr. Zimmerman stated that Organic Soils concedes that it did not meet the 18 month deadline, or the six month extension, and per the Ordinance, that was enough to terminate the Special Use Permit. Mr. Zimmerman also noted that there has not been a full set of plans submitted to the Building Department, and said that the proposed motion is out of line, and that Organic Soils is misreading the Ordinance.

Mr. McNees disagreed with Mr. Zimmerman's characterization of the Plan Commission's position, and that 'and other circumstances', cannot be ignored.

Chairman Parisi asked if there were any other witnesses.

Mr. Rhodes explained that Mr. McNees is making a motion that the Plan Commission should decide that the Village hasn't sustained its initial burden, and that denial of the Village's application should be recommended to the Village Board, that he doesn't see anything in the Ordinance or in the Plan Commission's rules that provide for a preliminary dismissal based on the Village's case, and recommended to put on the case and make the argument.

Mr. McNees said that he's standing on the motion and asked the Plan Commission to rule on the motion. Mr. Rhodes agreed.

Chairman Parisi asked Mr. Rhodes to summarize the motion.

Mr. Rhodes said the motion would be to either grant or deny the Respondent's request that the application for Termination of Special Use Permit be dismissed and that the Plan Commission recommend to the Village Board that the Special Use not be terminated and the property not be rezoned. Mr. Rhodes suggested that the motion would be to grant to dismiss.

Commissioner Petella moved and Commissioner Creighton seconded Organic Soils motion to dismiss.

Mr. Rhodes explained that if the Commission voted 'yes' that they will be voting to grant the motion to dismiss and recommend to the Village Board that Special Use not be terminated, and if the Commission voted 'no', the motion will be denied and the Respondent's case will proceed.

Commissioner Spink requested clarification of the vote and the motion. Mr. Rhodes reiterated.

Commissioner Creighton asked to discuss the motion and to clarify Mr. McNees' interpretation of the code and his challenge of the absence of 'and other circumstances'. Mr. Rhodes explained that Mr. McNees' interpretation is that there is a twofold requirement of H1 and any other circumstance, and that Mr. Zimmerman is saying that Mr. McNees' interpretation is incorrect, and that the H1 provisions have to be met and other conditions have to be taken into account, but not necessarily have to make a determination that something exists, that there is no double requirement.

Mr. Zimmerman stated that Organic Soils interpretation would make it impossible to terminate a Special Use, because some unknown other circumstance has to be found.

Mr. McNees responded that, in his opinion, intent to abandon must be present to terminate Special Use, and Subsection 4 offers guidance to the Plan Commission as to evaluate a petition to terminate that specifically talks about the intent is to prevent the abandonment of a Special Use Permit project. Mr. McNees explained the nature of a Special Use and the fear is that Special Use would be approved, the project would be abandoned and the zoning would not change, and there was no testimony that Organic Soils ever intended to abandon the project.

Mr. Zimmerman asked Chairman Parisi to ask Mr. McNees to point exactly to where the Ordinance says intent to abandon is essential.

Chairman Parisi asked to take a step back as there seemed to be a need for further understanding required by the Commission and that before they act on Mr. McNees' motion, they could either continue to have further discussion from the Commission, with Mr. McNees or Mr. Zimmerman, about what has been presented, or the Commission can act on the motion on the table. Chairman Parisi recommended that the motion be acted upon, and proceed as suggested by Mr. Rhodes.

In response to Mr. Zimmerman's request for Mr. McNees to point to where the Ordinance says intent to abandon, Mr. McNees cited City of Des Plaines vs LaSalle National Bank (1976), which confirms intent to abandonment of non-conforming use, and a local DuPage County trial court case before Judge Sheen, MIH LLC vs Anglin et al 09CH310, represented by Mr. Zimmerman's firm.

Mr. Zimmerman clarified that the Des Plaines case involved the abandonment of a non-conforming use, not the failure to initiate Special Use, and the pending trial court case in DuPage County may not be cited for precedential value in the State of Illinois, by rule of the Supreme Court.

Mr. Mark Daniel, an attorney attending in the event that an attorney who was under oath was required to testify, testified that the 18th Judicial Circuit of DuPage County found that intent to abandon a property is necessary in any proceeding, including a non-conforming use, as in Des Plaines, as in MIH LLC vs Anglin case in Hinsdale, testifying that that circumstance occurred is necessary when he's under oath. Mr. Daniel stated that there needs to be intent to abandon, and that it is unconstitutional deprivation to terminate without showing of intent when there's a property right at issue, and that Illinois cases are clear on that, and that home rule communities are no different than non-home rule communities in this instance.

Mr. Rhodes asked Mr. Daniel if it was his argument that in any ordinance that references any time limit that the Constitution requires that there be abandonment, and that the Ordinance does not reference abandonment.

Mr. Daniel stated that if there was a vested property right, then yes, and that the Ordinance does not reference abandonment until the later sections.

Mr. Rhodes stated that the later sections of the Ordinance were related to rezoning.

Mr. Daniel referred to the previously mentioned paragraph 4, that the phrase 'other circumstances' ties into other requirements, and that 'other circumstance', in his view, is intent, and that they have been trying, and referred to the Army Corps of Engineers application. He stated that it was an important issue, and it was important to address it early.

Mr. Zimmerman recommended to the Commission to take the motion under advisement, hear Organic Soils side of events regarding the lease, property rights, whether the lease exists, or lease is contingent on the operations permit from the State of Illinois.

Commissioner Creighton asked Mr. Rhodes if it was possible to proceed in that manner. Mr. Rhodes said it was if they so choose, that it was six of one, half a dozen of the other.

Mr. Rhodes asked Mr. McNees if his argument would be the same in either process.

Mr. McNees said that he didn't have to respond and that Mr. Rhodes was making assumptions.

Chairman Parisi asked Secretary to call role.

There was discussion as to what a no vote meant and what a yes vote meant.

The results of the roll call vote were:

Ayes:	2	Commissioners Spink, and Tucek.
Nays:	4	Commissioners Creighton, Christopher, Petella, Chairman Parisi
Abstain:	0	
Absent:	1	Commissioner Meneghini

The motion to grant the dismissal of Mr. McNees' motion to not terminate the Special Use Permit was denied and the hearing continued.

Mr. McNees stated that the Ordinance had a blanket provision that a Special Use can be terminated if construction doesn't start within 18 months, and that this is not an ordinary project. Mr. McNees stated that landscape waste transfer stations are new and that the State changed its laws to require landscape waste to stay out of landfills and recycled into compost to protect the environment, the neighbors, and that they are highly regulated. Mr. McNees stated that, prior to any construction, IEPA approval is required, and their rigorous standards must be met, and that a developer won't spend on any plans until the IEPA permit is approved, which happened May of 2015, and that plans were submitted February 9, 2015. Mr. McNees stated that it takes time to prepare and review and submit the required site plan and building plans, and the Village has been receiving copies of all the plan submittals that Organic Soils has filed, and that site improvement plans were submitted November 2015.

Mr. McNees stated that site engineering included a retention plan for storm water runoff, but did not include a wetland determination because, as previously testified, to Organic Soils knowledge, there were no wetlands on the County map, and that despite Mr. Bastian's 2013 recommendation for a wetlands delineation, the Organic Soils representative decided to rely on the DuPage County maps.

Mr. McNees stated that on March 28 the Village engineer stated that there are low grade wetlands on the property that weren't there before and that Organic Soils' engineer concurred, and the application for the Army Corps of Engineers was filed in July 2016, and the Army Corps of Engineers hasn't responded yet. Mr. McNees stated that the earliest they hope to hear from them is January 2017.

Mr. McNees stated that the Special Use Permit issued August 18, 2014, Staff alerted Organic Soils that the Special Use would expire February 18, 2016, an extension was applied for and on February 1, 2016, the Village extended the deadline to July 31, 2016. Mr. McNees stated that in February, 2016, that Organic Soils was unaware of the wetlands issue, and that there were no deadlines noted in the lease, that deadlines were determined by when the permits were obtained.

Mr. McNees stated on July 18, 2016, Organic Soils prepared its application for the Army Corps of Engineers and asked the Village for another extension. Mr. McNees stated that the Village Board directed Staff to revise the lease to add date deadlines, and to begin rental payments, as a condition to extend Special Use. Mr. McNees stated that the staff prepared a draft lease amendment and that he was retained in late August 2016, to negotiate the terms of the lease.

Mr. McNees stated that on October 17, 2016, he presented his terms of the lease to the Village Board and, after some negotiation, that there would be deadlines and that Organic Soils would assume the risk of paying rent prior to receiving the Army Corps of Engineers permit or the IEPA operating permit in time for construction. Mr. McNees stated that the Board directed Staff to work with him to prepare the lease, and rental payments would begin June 1, 2016.

Mr. McNees stated that on November 7th the signed lease and payment were ready to be submitted to the Board, however, the Village Board shifted gears and decided to begin termination of Special Use, everything halted, and that there was no point in going forward. Mr. McNees stated that Organic Soils spent about \$100,000.00, so far, on this project.

Mr. McNees stated that after the November 7th meeting there was a conversation between Staff, Organic Soils and Mr. McNees, the pre-submittal conference was halted, as was further review of the storm water application, and on November 21st the Village Board directed everything back to the Plan Commission to determine if the Special Use should be terminated. Mr. McNees stated that Staff provided the Ordinance, Section H2, it has been found, and they acknowledge that the deadline had not been met, but there has to be more than failure to meet deadline in order to terminate, and that it says 'and other circumstance', of which there is no testimony, findings of facts, change in conditions, etc. Mr. McNees states that Section H4 of the Ordinance gives direction as to the intent, and that Section H4 means intent to abandon. Mr. McNees states that Organic Soils has not, nor has any intent to abandon the project, taken on the risk with the Army Corps of Engineers. IEPA, etc. Mr. McNees stated that the Ordinance termination provision contemplates that the 18 month deadline may not be attainable in all circumstances, and that the Board may grant multiple extensions with the only limitation being that any individual extension can be for only one year maximum, and that the requirement of a deadline can be used in the event of abandonment of the project. Mr. McNees stated that he does not feel that Section H4 can be used on complex proposals, such as Organic Soils, so the project can be finished.

Mr. McNees stated that the Village is sending the wrong message to developers by saying the Village can terminate Special Use after 18 months even if large amounts of money have already been spent.

Mr. McNees stated that Section H applies to abandoned projects, and there is no intent to abandon, that Organic Soils has proceeded in good faith, and that there are no other circumstances, and that the Plan Commission should vote to suggest to the Board that they comply with Organic Soils request to extend the Special Use Permit with the agreement that the construction begin June 1, 2017.

Mr. Zimmerman questioned the form in which Mr. McNees gave his testimony, and said that he had questions for Mr. McNees. Mr. Rhodes stated that the request was that the testimony be given in narrative form, which it was.

Mr. Zimmerman asked Mr. McNees when he was engaged by Organic Soils, and if he was familiar with the project prior to being retained, and if so, how.

Mr. McNees answered that he was retained in August of 2016, and that he had a passing familiarity of the project prior to his retention, and that he was at an early Plan Commission hearing on another matter.

Mr. Zimmerman asked Mr. McNees about the amount of money that Organic Soils has already spent on the project. Mr. McNees stated that he was going to call Mr. Oppermann to testify in that regard.

Mr. Zimmerman clarified that Mr. McNees was not an engineer and that it was his opinion that this was a complex project. Mr. McNees answered yes.

Mr. Zimmerman asked Mr. McNees how long it took the IEPA to issue its opinion from application submittal. Mr. McNees answered that he was not an engineer, and that it took a little more than three months between receipt of application to issuance of the permit.

Mr. Zimmerman asked to clarify that the IEPA permit was issued in May with typo's. Mr. Daniel objected stating that the question was ambiguous because it refers to two types of permits, one being development and one being operational, and asked Mr. Zimmerman to clarify which type it was that he was referring to.

Mr. Zimmerman clarified that Organic Soils received a permit from the IEPA, and asked which one they received.

Mr. McNeese answered that it was his understanding that Organic Soils received the construction permit from the IEPA.

Mr. Zimmerman clarified that the IEPA issued the construction and not the operational permit because the facility had not yet been constructed. Mr. McNeese stated that that was correct.

Mr. Zimmerman referred to the letter written by Mr. McNeese on October 10, 2016 (Village Exhibit #5), and asked if the letter reflected the views of Organic Soils. Mr. McNeese agreed.

Mr. Zimmerman referred to page 2, Paragraph 1, Sentence 2, regarding that the Applicant admits that project delays are his fault, and if this was still true today. Mr. McNeese agreed.

Mr. Zimmerman asked Mr. McNeese if he was aware that Organic Soils was informed by the Village that it would need to do a wetlands delineation in 2013, and if he disputed that Organic Soils received that letter. Mr. McNeese stated that he was aware of Mr. Bastian's letter to the Organic Soils, and did not dispute the letter was received.

Mr. Zimmerman stated that the Village informed Organic Soils, in 2013, that wetlands delineation would be necessary, and asked Mr. McNeese if that was correct. Mr. McNeese stated that the letter spoke for itself, and that the letter stated that the property needed a wetlands delineation.

Mr. Zimmerman asked Mr. McNeese to clarify if his testimony today is that the project is so complex that 18 months is not enough time. Mr. McNeese stated that was correct.

Mr. Zimmerman asked Mr. McNeese if it was correct that in March, 2016, Organic Soils learned from Christopher Burke Engineering that there were wetlands on the site, and then Organic Soils hired a wetlands expert to do the wetlands delineation, which took less than a month. Mr. McNeese said that was correct.

Mr. Zimmerman asked that if this project is complex, and 18 months is not enough time, and the wetlands delineation took less than a month when it was accepted that it was necessary, wasn't it feasible that it could have been done in the fall of 2014. Mr. McNeese said that was correct.

Mr. Zimmerman asked Mr. McNeese if it was feasible that the wetlands delineation could have been done in fall of 2014. Mr. McNeese stated that it was feasible that it could have been done prior to the IEPA construction permit.

Mr. Zimmerman asked Mr. McNeese who the principal of Organic Soils is at this point, and if he was the principal in fall 2014. Mr. McNeese answered Donald Oppermann, and that he was the principal in 2014.

Mr. Zimmerman asked Mr. McNeese if Mr. Oppermann had any land development experience. Mr. McNeese said yes.

Mr. Zimmerman asked Mr. McNeese if Mr. Oppermann would know that a wetlands delineation near a creek would be a preliminary part of any development. Mr. McNeese answered that he didn't know if he would agree with that, or if that would be Mr. Oppermann's knowledge.

Mr. Zimmerman asked Mr. McNees if he knew if there was a creek near this property and what it was called. Mr. McNees said that there was and it was called Klein Creek.

Mr. Zimmerman asked Mr. McNees to explain why this was a complex project that 18 months is not enough time. Mr. McNees stated that it has to go to State and Federal agencies in order to get necessary permits before ground can be broken, and the IEPA has regulatory branches that are looking out for construction issues and operational issues, and now the Army Corps of Engineers is involved. Mr. McNees said that the engineering documentation has a very high volume of paperwork.

Mr. Zimmerman asked Mr. McNees if it was correct that Organic Soils' documents indicate that it anticipates the Army Corps process to take 6 – 9 months. Mr. McNees said that that is what the Village Engineering staff advised.

Mr. Zimmerman asked Mr. McNees if it was correct that the timing was 6 – 9 months after learning of the wetlands on the site. Mr. McNees clarified that it was 6 – 9 months after Organic Soils applied, which was July, 2016.

Mr. Zimmerman asked Mr. McNees if it was correct that it took three months after the wetlands survey to get the application in to the Army Corps of Engineers. Mr. McNees explained that the wetlands delineation was not the only thing necessary, that an application form has to be filed with the delineation attached.

Mr. Zimmerman asked Mr. McNees if it was correct, in the worst case scenario, it took one month to do the wetlands delineation, three months for the Army Corps application, and 9 months for the Army Corps to rule on the application, equaling 13 months. Mr. McNees accepted that timeline.

Mr. Zimmerman stated that Mr. McNees said that Organic Soils was looking at erroneous maps, and asked him if it was correct that Organic Soils was not required to do the wetlands investigation early in the process, and that's why an extension is warranted. Mr. McNees stated that he didn't know if he would agree that the maps were erroneous, as much as out of date, but that citizens and businesses should be able to rely on County maps in the way of wetlands delineation, which is what Organic Soils did, and they were wrong to do so.

Mr. Zimmerman asked Mr. McNees if it was true that one of the reasons that developers do a wetlands delineation is to make sure that there are no wetlands on the property aside from what maps might say. Mr. McNees said that would be a reason to do a wetlands delineation.

Mr. Zimmerman asked Mr. McNees why it took his client almost two years to apply for the Army Corps permit when the entire process can take about 13 months. Mr. McNees said that there is no point in spending the money on wetlands determinations and Army Corps of Engineers process if the IEPA is not going to grant the permit to construct a waste transfer station. Mr. McNees said that the location of the wetlands required an additional retention pond and relocation of the driveway, and that the permits can't be applied for all at once.

Mr. Zimmerman asked Mr. McNees to clarify the proper sequence and timing of applications. Mr. McNees said that he is not an expert of the timing, but the logical first step would be the IEPA permit to construct, and without IEPA approval, the project would have to be abandoned.

Mr. Zimmerman asked Mr. McNees if he was aware that the IEPA permit has a two year expiration. Mr. McNees said he believed that was correct and the deadline was coming up and it was extendable, but didn't recall the exact deadline.

Mr. Zimmerman asked Mr. McNees if he knew the circumstances under which the IEPA would extend their permit. Mr. McNees did not.

Mr. Zimmerman asked Mr. McNees if it was correct that Organic Soils would be forced to get all permits it needs in a two year period from the IEPA construction permit. Mr. McNees said unless it was extended.

Mr. Daniels stated it was subject to extension and that Mr. McNees doesn't know the circumstances of extension, so there was no record of the absolute requirement.

Mr. Zimmerman stated that Mr. McNees testified that he doesn't know, but that he has also testified about the business risk of not applying for the permits and other basic things. Mr. Daniel said that was not the question asked.

Mr. Zimmerman asked Mr. McNees why permits were not applied for simultaneously. Mr. McNees stated his client did not know of the wetlands and that first they needed to make certain that the IEPA would allow a transfer facility at the location.

Mr. Zimmerman asked Mr. McNees if he knew who the siting authority for transfer stations was. Mr. McNees said that all that he knows is that the IEPA issued a permit to construct and that it is controlled by the state and not locally.

Mr. Zimmerman asked Mr. McNees why Organic Soils didn't submit site plans to the Village of Carol Stream in May of 2015. Mr. McNees stated that at the end of May, 2015, Organic Soils had the IEPA permit in hand, at which point site engineering, which included storm water plans, was submitted in November 2015, and it was his understanding that there were revisions, which were typical, but that it was not until March 28, 2016, that the Village Engineers notified Organic Soils that there was a wetlands issue, and a delineation is required.

Mr. Zimmerman asked Mr. McNees when the first time Organic Soils submitted a set of site engineering plans to the Village of Carol Stream. Mr. McNees said that Mr. Bastian's November 2015, chronology is correct.

Mr. Zimmerman asked Mr. McNees if it was correct that the plans were submitted 6 months after the IEPA permit was issued, and that the back and forth didn't start until after November of 2015. Mr. McNees stated that was correct.

Mr. Zimmerman asked Mr. McNees if it was correct that there were comments during the back and forth, and that in March 2016 there were comments from Christopher Burke Engineering that there were wetlands on the site. Mr. McNees said that was correct.

Mr. Zimmerman asked Mr. McNees why Organic Soils didn't submit its engineering plans more quickly than six months after receiving its IEPA permit. Mr. McNees said that he didn't know the reason for the delay.

Mr. Zimmerman asked Mr. McNees, referring back to his letter to the Village, if it was correct that there was no question that the delays were the fault of Organic Soils. Mr. McNees said yes.

Mr. Zimmerman asked Mr. McNees if it was correct that he did not know why there was a delay in submitting just site engineering plans from May of 2015 to November of 2015. Mr. McNees stated that was correct, referencing failure to get the wetlands delineation done earlier.

Mr. Zimmerman asked Mr. McNees if it was correct that he had seen the extension Ordinance #2016-02-16. Mr. McNees said yes.

Mr. Zimmerman referenced the third section regarding failure to commence construction within 18 months, and asked Mr. McNees if he and Organic Soils were surprised by the termination of Special

Use proceedings. Mr. McNees said it is his testimony that they were surprised by it based on the Board's position on November 7, 2016. Mr. McNees stated that he thought there would be an amended lease in place, an extended Special Use permit, and they would proceed.

Mr. Zimmerman asked if there is an amended lease. Mr. McNees stated that it was prepared, signed by Organic Soils, tendered to the Board, negotiated between himself and Staff per the direction of the Board, and, as he understood, the Board delegated to Staff the administrative position to wrap it up. Mr. McNees stated that he continued to push for longer deadlines, Staff pushed back, deadlines were compromised on in the amended lease, and, per the Board's direction, the lease was submitted in connection with the request for an extension to the Special Use permit.

Mr. Zimmerman asked Mr. McNees if the lease was approved by the Village Board. Mr. McNees said that the amended lease, which has firm deadlines, was not approved, and it is still pending. Mr. McNees clarified that what is still pending is the request for an extension to the Special Use permit and, as a condition to that, the adoption of the amended lease.

Mr. Zimmerman asked Mr. McNees if it was correct that they could agree that right now the Village Board has never approved the amendment to the lease. Mr. McNees said the lease amendment is not yet approved and that it was correct.

Mr. Zimmerman asked Mr. McNees if he drafted the draft amendment to the lease. Mr. McNees said no, that the Village Staff started on it, that he and Mr. Rhodes both had, that there was legal wording missing, but he was not agreeing to establish a firm deadline for commencement or completion of construction and commencement of operations, but Organic Soils conceded in the October 17th Board meeting.

Mr. Zimmerman asked Mr. McNees if he was involved in the negotiation and drafting of the draft amended lease. Mr. McNees said absolutely.

Mr. Zimmerman asked Mr. McNees if, as part of his duties in the negotiation and drafting of the draft amended lease, he reviewed the original lease and if he is reasonably familiar with the original lease. Mr. McNees said yes, and that he thought he was familiar with the original lease.

Mr. Zimmerman asked Chairman Parisi to enter the lease into the record as Village Exhibit #6.

Chairman Parisi requested a motion for a five minute break. Commissioner Creighton moved to approve and Commissioner Christopher seconded the motion for a five minute break.

The motion was passed unanimously.

Chairman Parisi called the meeting back to order at 9:14pm, and asked Mr. Zimmerman to continue.

Village Exhibit #6 was passed out to the Commission.

Chairman Parisi asked Mr. Zimmerman to talk about the benefit of going through the lease agreement and purview the Village Board versus the Commission.

Mr. Zimmerman said that the lease agreement is contingent upon the issuance of several permits, that there was talk of property rights, vested rights, and abandonment, and that this will show that there is no lease agreement.

Mr. Zimmerman referred to page four of the original lease and asked Mr. McNees if he had previously reviewed the lease in preparation for drafting the amended draft lease. Mr. McNees stated that he was not involved in the preparation of the August 18, 2013, lease, that he was involved in the amendment.

Mr. Zimmerman clarified the question and asked if Mr. McNees reviewed the original lease, Village Exhibit #6, in the process of negotiating the amendment to it. Mr. McNees said yes.

Mr. Zimmerman asked Mr. McNees to turn to page 4, Section 5A, and asked if he saw the section that said the duties of Organic Soils and the Village being contingent upon application and receipt of the following Village approvals. Mr. McNees said yes.

Mr. Zimmerman asked Mr. McNees to look at Paragraph 1, Subdivision Approval, and asked Mr. McNees if that had been granted. Mr. McNees said no.

Mr. Zimmerman asked Mr. McNees to turn to Page 6, starting on the bottom of page 5, and asked if he saw the section called Rent where the lease said that Organic Soils shall pay \$18,000 per annum in rent to the Village beginning on the first day of the month following the date of the issuance of the IEPA operational permit, and that since the operational permit has never been issued, no rent has been paid under this lease. Mr. McNees said yes, that is correct.

Mr. Zimmerman asked Mr. McNees to refer to Page 5 section C, which refers to the lease agreement being contingent upon Organic Soils receiving IEPA permits and all other Governmental Approvals necessary for operating a landscape waste facility, and asked if it was true that the Village's obligations were contingent upon Organic Soils receiving all discussed Government Approvals.

Mr. Daniel objected saying the question was vague and asked which obligations.

Mr. Zimmerman said that the lease said all Government Approvals.

Mr. Rhodes asked Mr. Zimmerman to specify the obligations.

Mr. Zimmerman asked Mr. McNees if Organic Soils has received all necessary Government Approval to operate the landscape waste transfer facility. Mr. McNees said no.

Mr. Zimmerman had no more questions for Mr. McNees.

Mr. Rhodes asked if anyone in the audience had any questions for Mr. McNees. There were none.

Chairman Parisi asked the Plan Commission if there were any questions for Mr. McNees. Commissioners Petella, Spink, and Christopher had none.

Commissioner Creighton asked Mr. McNees if Organic Soils operated any other landscape waste transfer facilities. Mr. McNees said no.

Commissioner Tucek asked Mr. McNees if any other land with less contention has been looked at for the same project or just focused on this piece of land. Mr. McNees said that once zoning was approved all efforts went into developing this parcel, and that this location is excellent for this type of facility.

Chairman Parisi asked Mr. McNees, with trying to understand the first requested extension and Village Board involvement, and aside from the lease agreement, to clarify the process of identifying the extenuating circumstances, on the part of Organic Soils, for the extension. Chairman Parisi said that it was identified that there may be a wetland in 2013, but no County maps identified wetlands on the property, and that it was not until IEPA approval that discussion between the civil engineer and a Village Engineer determined wetlands, and asked which came first and how it was agreed upon.

Mr. McNees stated that September of 2013, Mr. Bastian sent comments, prior to Special Use permit issuance, to Organic Soils that said to do a wetlands delineation, and that it was not a required condition for the Special Use; get the IPEA permit; November of 2015 site engineering, including storm water was applied for, wetlands being a part of storm water application; March 28, 2016, Burke Engineering said

there was a wetlands; and at that point, Organic Soils hired a civil engineer who agreed that there was a wetland on the property.

Chairman Parisi asked Mr. McNees to clarify that the person who identifies the wetland as a separate engineer versus the original engineer who submitted the preliminary plans to the Village. Mr. McNees stated that the preliminary plans relied on the County mapping which showed no wetlands.

Chairman Parisi asked Mr. McNees to clarify that in March of this year, not until Christopher Burke did the review on behalf of the Village, was there any identification of wetlands. Mr. McNees said yes, March 28, 2016.

Chairman Parisi asked where Organic Soils was with the Army Corps of Engineers process. Mr. McNees said that they applied July of 2016, and have heard nothing since.

Chairman Parisi asked if the application to the Army Corps of Engineers was applied for prior to the amendment being approved by Village Board. Mr. McNees said no, first, before the March 28th letter, there was the extension, of the Special Use permit granted by the Village Board on February 1 to go to July 31; now that Organic Soils understands and agrees that they have to go the Army Corps of Engineers to handle wetlands approval, which, according to Village Engineers, can take 6 – 9 months, a second extension of Special Use was requested. Mr. McNees went on to say that the Village Board, based on Staff recommendation, as Mr. Bastian indicated, the second request should not be granted unless the lease was amended, and that's when Mr. McNees was retained.

Chairman Parisi asked Mr. McNees to clarify that, with reference to Ordinance #2014-08-44, Section 3-22, the facility must comply with all state, county, and Village codes and requirements, and following with extension of Ordinance #2016-02-06, Section 2, construction is to commence on or before July 31, 2016, that there are other circumstances, regarding the process, would warrant the Commission not to terminate the Special Use. Mr. McNees said that at the time of the extension, Organic Soils did not have the March 28th letter from the Village Engineers verifying a wetlands issue.

Chairman Parisi asked Mr. McNees to clarify that the extenuating circumstances for not recommending termination of Special Use to the Board would be not having the letter about the wetlands issue. Mr. McNees said that that was an extenuating circumstance that the Plan Commission should consider.

Commissioner Creighton asked Mr. McNees why, if they received verification of a wetlands from Burke Engineering in March, 2016, it took almost four months to file an application with the Army Corps of Engineers, nine days before the extension expired. Mr. McNees said that in between that period of time, it took Organic Soils' engineer time to review and agree with Burke Engineering, and that the application needs to be prepared, which is a lengthy process, and then the request will, hopefully, be granted.

Commissioner Creighton asked if the investment to apply with Army Corps of Engineers was substantial, and to clarify that the application was submitted nine days prior to expiration of the extension, on the assumption that the Village would extend it. Mr. McNees said yes, the investment was substantial, and that was just how long the application took to get to that point, and that the extension was on file with the Village before filing with the Army Corps of Engineers.

Mr. McNees called Don Oppermann to the stand and state his name and asked if he was the president of Organic Soils.

Mr. Oppermann stated his name as Donald Oppermann and that he was the President of Organic Soils.

Mr. McNees asked Mr. Oppermann if he ever expressed intent to abandon the project. Mr. Oppermann said no, never.

Mr. McNees asked Mr. Oppermann if he reviewed his financial books and records for Organic Soils in connection with this matter. Mr. Oppermann said yes.

Mr. McNees asked Mr. Oppermann, between Village application fees, governmental application fees, engineering fees, surveyors, attorney's fees, how much money Organic Soils has spent on this project. Mr. Oppermann said in excess of \$96,000.00.

Mr. McNees asked Mr. Oppermann if, on or about November 7, 2016, he appeared before the Village Board with a check, and an amended lease, signed by Organic Soils. Mr. Oppermann said that was correct.

Mr. McNees asked Mr. Oppermann if the Village Board declined to accept the check and signed lease and that was when the Village Board directed the Staff to begin termination proceedings. Mr. Oppermann said that's right.

Mr. McNees asked Mr. Oppermann if it was correct that, prior to the meeting, he scheduled a pre-submittal conference with Village Staff to submit all of Organic Soils' permit applications. Mr. Oppermann said yes.

Mr. McNees asked Mr. Oppermann if it was correct that, prior to that, he had obtained everything from Mr. Bastian that needed to be filed out with the Village in order to get approval for the project, assuming that the Army Corps of Engineers granted the wetlands proposal. Mr. Oppermann said that was correct.

Mr. McNees asked Mr. Oppermann if it was correct that Organic soils prepared all of that and was ready to deliver to the Staff prior to November 7th, but that the meeting couldn't be scheduled. Mr. Oppermann said that was correct, and that they attempted to schedule it before the 7th, but because of scheduling issues of the Village staff, they could not accommodate until November 9th.

Mr. McNees asked Mr. Oppermann if, after the November 7th hearing, he and Mr. Bastian converse about the pre-submittal conference, asked who called whom, and asked what was said in the conversation. Mr. Oppermann said yes, he and Mr. Bastian spoke, that Mr. Bastian called him, and that, based on the direction Staff was given, that he felt it was not necessary to proceed with the pre-submittal meeting. Mr. Oppermann said that he told Mr. Bastian that he understood, and that he was sorry to hear it.

Mr. McNees asked Mr. Oppermann to clarify that the pre-submittal conference did not take place. Mr. Oppermann said that was correct.

Mr. McNees asked Mr. Oppermann, referring to the 2013 letter from Mr. Bastian to Organic Soils regarding that a wetlands delineation was needed, if it was necessary for the Special Use Permit. Mr. Oppermann said no, it was not.

Mr. McNees had no more questions for Mr. Oppermann.

Mr. Zimmerman asked Mr. Oppermann what his position with Organic Soils is, and who Dave Gravel was. Mr. Oppermann said that he is now the president, and Dave Gravel was the previous president.

Mr. Zimmerman asked Mr. Oppermann if he recalls that both he and Mr. McNees testified that obtaining a wetlands delineation was not necessary for Special Use. Mr. Oppermann said yes.

Mr. Zimmerman asked Mr. Oppermann to look at the Special Use Ordinance from 2014, Section 3, noting that there are 22 conditions, and asked him to look at condition #19, that states "that the final site grading and engineering must comply with the requirements of the DuPage County Countywide Storm water and Flood Plain Ordinance which may result in the need for modifications to the site plan", and

asked if he knew that the wetlands issue is part of compliance of the Countywide Storm water ordinance. Mr. Daniel objected citing vagueness.

Mr. Rhodes clarified that Mr. Zimmerman was asking whether or not Mr. Oppermann knows it's part of the ordinance.

Mr. Daniel stated that there was no wetlands issue until March of 2016.

Mr. Rhodes stated that was not correct because the statement in the September letter of 2013 raises a wetlands issue.

Mr. Daniel said that the letter said they should do a delineation, and asked if the delineation stated in the letter somehow became a matter of law that trumps Article 9's opening paragraph that says that the administrator has the authority to make the request for delineation based on certain factors.

Mr. Rhodes stated that the question was whether or not Mr. Oppermann was aware part of the DuPage County Countywide ordinance has wetlands. Mr. Daniel asked that the question be read back.

Mr. Rhodes asked Mr. Zimmerman to rephrase the question.

Mr. Zimmerman asked Mr. Oppermann if he recalled that Mr. McNees asked whether a wetlands delineation was a condition of the Special Use permit, and if he recalled answering that it was not. Mr. Oppermann said yes, and that was correct.

Mr. Zimmerman asked Mr. Oppermann if he was familiar with the requirements of all of the conditions of the ordinance. Mr. Oppermann said that he thought he was.

Mr. Zimmerman asked Mr. Oppermann how he knew whether or not his Special Use ordinance was conditioned on a wetlands delineation. Mr. Oppermann said that he didn't believe that was a part of the Storm Water and Flood plain ordinance.

Mr. Zimmerman asked Mr. Oppermann if he was an engineer, what formal training he had beyond high school, what his profession has been since college, and if land development had been a part of his profession. Mr. Oppermann said that he was not an engineer, had a Bachelor's degree in accounting, his profession has been business and business management, and the land development had been a part of it.

Mr. Zimmerman asked Mr. Oppermann if he was familiar with site engineering regulations in DuPage County. Mr. Oppermann said not specifically.

Mr. Zimmerman asked Mr. Oppermann if, when his lawyer asked him if his Special Use was contingent upon a wetlands delineation, he really didn't know. Mr. Oppermann said that Mr. McNees asked if he believed or knew that and he said yes.

Mr. Zimmerman clarified that Mr. Oppermann believed that the Special Use was not contingent upon a wetlands delineation, and if he still believed that today. Mr. Oppermann said that was correct, and that the ordinance did not specifically require a delineation.

Mr. Zimmerman asked Mr. Oppermann if he had seen any correspondence to his or the Village engineers, or his employees, that indicated compliance with the Countywide Storm Water management requirements to solve the wetlands issue. Mr. Daniel objected on vagueness, and that Mr. Zimmerman was suggesting a law that does not exist.

Mr. Zimmerman stated that he asked if Mr. Oppermann had seen correspondence. Mr. Daniel said it was a compound question that contains a conclusion about the Countywide Storm Water ordinance, and

that Mr. Zimmerman was trying to trick someone who is not an engineer, or not familiar with the Countywide ordinance.

Mr. Rhodes asked Mr. Zimmerman to break down the question.

Mr. Zimmerman said that he asked Mr. Oppermann if he has seen any correspondence about compliance with the countywide ordinance among the engineers, and if the correspondence mentioned compliance. Mr. Oppermann said that he had seen correspondence, and that he was sure it mentioned compliance.

Mr. Zimmerman asked Mr. Oppermann who the correspondence was from and when he saw it. Mr. Oppermann said that he believed that it was from Jerry Kotowski, his IG consulting engineer, and that he didn't recall when he saw the correspondence, sometime since July or August.

Mr. Zimmerman asked Mr. Oppermann what the correspondence said about compliance with the Countywide Storm Water Ordinance. Mr. Oppermann said that he did not specifically recall exactly, that he had to sign documents that were prepared. Mr. Zimmerman asked Mr. Oppermann if the documents were for the Army Corps. Mr. Oppermann the documents were for the Storm Water management. Mr. Zimmerman clarified if that was in July of 2016. Mr. Oppermann said July or August, that he thought it was August.

Mr. Zimmerman asked Mr. Oppermann if he was aware that the Village Engineering Staff had not received any correspondence or call from Organic Soils' engineers after May 6, 2016. Mr. Oppermann said no.

Mr. Zimmerman asked Mr. Oppermann who his consulting engineers were on or about May 6, 2016. Mr. Oppermann said, Jerry Kotowski from IG Consulting Engineers and Bolinger for the environmental.

Mr. Zimmerman asked Mr. Oppermann why he was engaging environmental engineers at that point. Mr. Oppermann said that was after the notification that there may be wetlands on the property.

Mr. Zimmerman asked Mr. Oppermann to clarify that Jerry was not his wetlands engineer. Mr. Oppermann said no, that he believed Bolinger did the wetlands delineation.

Mr. Zimmerman asked Mr. Oppermann how long IG Consulting has worked for Organic Soils on this project, and who his consulting Engineer was prior to IG Consulting, and how long the prior consultant was on the project. Mr. Oppermann said IG was hired back in 2015, and that he believed the prior consultant was Roux Associates Engineering and Design, and couldn't specifically state the timeline, but that he thought it was in 2013 or 2014.

Mr. Zimmerman asked Mr. Oppermann if he recalled if Roux Associates did any work in 2015. Mr. Oppermann said not that he was aware of.

Mr. Zimmerman asked Mr. Oppermann if he hired IG Consulting in 2015 and when. Mr. Oppermann said he believed that was correct, and couldn't specifically state without looking at the records.

Mr. Zimmerman asked Mr. Oppermann how much money was paid to Roux Associates. Mr. Oppermann said \$6400.00 or there about. Mr. Zimmerman asked Mr. Oppermann if Roux Associates was paid that amount over 2013 and 2014. Mr. Oppermann said yes, mostly 2013 and into the early part of 2014.

Mr. Zimmerman asked Mr. Oppermann what the latest date that Roux was paid, and if, in April 2014, any other engineers were working for him besides Roux. Mr. Oppermann said the latest Roux was paid was April of 2014, and that IG Consulting was working for him at that time. Mr. Zimmerman said that he thought IG Consulting started in 2015. Mr. Oppermann said that's what he stated, but there were

payments to IG Consulting in 2014, and that he was not directly involved. Mr. Zimmerman asked Mr. Oppermann if Mr. Gravel was running the project at that point. Mr. Oppermann said yes.

Mr. Zimmerman asked Mr. Oppermann what aspects of the project IG Consulting was handling. Mr. Oppermann said they handled most, if not all, of the civil engineering.

Mr. Zimmerman asked Mr. Oppermann if he recalled hiring a third environmental engineering firm in 2016. Mr. Oppermann said that was Bolinger Environmental, and clarified that they paid Roux into November of 2014.

Mr. Zimmerman asked Mr. Oppermann when he started paying IG consulting. Mr. Oppermann said in July 2014. Mr. Zimmerman asked if there was overlap between IG and Roux. Mr. Oppermann said he couldn't say if it was work or payment, and that he couldn't remember the dates as he only sees the dates on the checks.

Mr. Zimmerman asked Mr. Oppermann when Bolinger started working for him. Mr. Oppermann said Bolinger did the environmental so it would have been in April or May, 2016, and that he didn't have the specific dates.

Mr. Zimmerman asked Mr. Oppermann if Bolinger handled the Army Corps application. Mr. Oppermann said yes they did.

Mr. Zimmerman asked Mr. Oppermann if he recalled testimony by him or Mr. McNees that the Army Corp application was filed a few days before the extension was up in July of 2016, and that the extension of Special Use expired July 31, 2016. Mr. Oppermann said that he didn't remember being presented with the question, but that the Army Corp application was filed in July, 2016, and that the Special Use was up on July 31, 2016.

Mr. Daniel said he wanted the record to be clear that the Special Use was subject to termination and didn't expire, and there was no automatic expiration.

Mr. Zimmerman asked Mr. Oppermann if he was aware that the extension to the construction expired July 31, 2016, and saw fit to send to file the Army Corps application anyway. Mr. Oppermann said that was correct.

Mr. Zimmerman asked Mr. Oppermann if he recalled appearing, and addressing the Village Board about this project, at a meeting on November 7th. Mr. Oppermann said that was correct.

Mr. Zimmerman asked Mr. Oppermann if it was true that he apologized to the Board at the meeting for "dropping the ball". Mr. Oppermann said that he didn't remember the word but that was possibly what he meant.

Mr. Zimmerman asked Mr. Oppermann if he recalled that, on or before November 7th 2016, he said he was trying to arrange a pre-submittal meeting with Village Staff, and that the meeting did not get scheduled until November 9th. Mr. Oppermann said yes.

Mr. Zimmerman asked Mr. Oppermann if he knew what a pre-submittal meeting was, and to describe his understanding of it. Mr. Oppermann said that it was so Organic Soils could bring in all drawings and application forms, and sit down with Village Staff to see that it was ready for submittal.

Mr. Zimmerman asked Mr. Oppermann if it was fair to say that was a very preliminary meeting. Mr. Oppermann said they were hoping not, but from the Village standpoint it was possible.

Mr. Zimmerman asked Mr. Oppermann if it was correct that a pre-submittal meeting was something that happened before permit application submittal. Mr. Daniel objected stating that an application for any permit, under the lease, has to be submitted to the Village first, and to clarify the permitting agency.

Mr. Rhodes said that the questions directed to Mr. Oppermann be referenced the meeting that was to occur with Village Staff regarding a pre-application for Village Approvals. Mr. Daniel asked that the question be restated.

Mr. Zimmerman asked Mr. Oppermann if he could explain what the pre-submittal was about. Mr. Oppermann said he believed that it was about the Village application for construction of the facility.

Mr. Zimmerman asked Mr. Oppermann if it was correct that it was a meeting that takes place before application of the building permit. Mr. Oppermann said that they were prepared to bring the building permit application, along with drawings, hoping they would be accepted and to present them for application. Mr. Zimmerman clarified the building permit. Mr. Oppermann said that was correct.

Mr. Zimmerman asked Mr. Oppermann if, as of November 2016, the July 31, 2016, extension had expired by four months. Mr. Daniel objected saying the extension didn't expire, but became subject to Subsection H.

Mr. Rhodes suggested asking Mr. Oppermann whether the date within the Ordinance had passed.

Mr. Zimmerman asked Mr. Oppermann if the date within the Ordinance had passed. Mr. Oppermann said yes.

Mr. Zimmerman asked Mr. Oppermann if he knew if he was also subject to Section 3 of that ordinance that says Special Use might be terminated. Mr. Oppermann said he believed he did.

Mr. Zimmerman asked Mr. Oppermann if, as of the attempts to schedule the pre-submittal meeting, the Village Board had not entered the lease amendment, although it had been drafted. Mr. Oppermann said that the Village Board had given direction to Staff to work out the final details for the lease amendment and the extension.

Mr. Zimmerman asked Mr. Oppermann if it was correct that the Board had not approved the lease as of November 7th or November 9th, or granted another extension to the construction deadline. Mr. Oppermann said they had not approved the lease or extension.

Mr. Zimmerman had no more questions for Mr. Oppermann.

Mr. Rhodes asked if there were any questions for Mr. Oppermann from the audience.

Chairman Parisi asked if there were questions from the Commission. Commissioners Tucek, Creighton, and Christopher had none.

Commissioner Spink asked Mr. Oppermann what the Board's reason was for not accepting his check at the November 7th meeting. Mr. Oppermann said a number of the Trustees felt differently about the project and didn't know if they wanted it to move forward.

Commissioner Petella asked Mr. Oppermann at what point did he become aware that he had a wetlands issue. Mr. Oppermann said he believed it was March 28, 2016, when Burke indicated that there may be a wetland. Commissioner Petella asked if this issue was brought up in 2013. Mr. Oppermann said yes, but as he understood, when the DuPage County maps were reviewed, it didn't indicate a wetlands.

Commissioner Petella said that he was unclear as to who decides that there is or isn't a wetlands, and that the Village would know. Mr. Oppermann said he didn't know either.

Commissioner Petella asked Mr. Oppermann if the engineering firms that he hired were reputable, Mr. Oppermann said yes, they believed so.

Commissioner Petella asked Mr. Oppermann what the reason was for changing firms, if it was normal to have three different firms, were they all doing the same things or were they addressing separate issues. Mr. Oppermann said he believed that they were addressing separate issues.

Commissioner Petella asked Mr. Oppermann if they just missed the wetlands issue, or if they were given the wrong map, and that he was trying to understand how the wetlands issue fell through the cracks. Mr. Oppermann said he didn't believe they were given the direction to proceed that there were wetlands on the property.

Commissioner Petella said he kept going back to asking who decides if there are wetlands, and if it is up to the hired engineering firms to determine. Mr. Oppermann said that David Gravel, who headed the project, looked at the maps and said that there were no wetlands. Commissioner asked if David Gravel was an engineer or a specialist. Mr. Oppermann said that David Gravel was a specialist in land planning.

Chairman Parisi asked Mr. Oppermann to clarify the timing of scheduling the pre-application process meeting, and when the planning of the pre-application meeting started. Mr. Oppermann said that the proceed started in August after Mr. McNees was hired. Chairman Parisi clarified that it took a month to a month and a half to schedule with the Village. Mr. Oppermann said no, that they had to get all of the drawings set, including all applications, and once that was done, he reached out to Mr. Bastian to schedule the meeting, and that may have been on the Tuesday or Wednesday before the November 7th meeting.

Chairman Parisi asked Mr. Oppermann if, when he was ready with the submission, that the meeting was scheduled promptly, and that following the pre-application meeting, Mr. Oppermann was prepared to submit permitable documents, i.e. civil engineering drawings, architecture and landscape, prepared for initial Village review. Mr. Oppermann said that was correct.

Chairman Parisi asked Mr. McNees if he had any other witnesses. Mr. McNees said no.

Chairman Parisi asked if there was anyone in the audience who would like to make a statement or to testify.

Frank Cerwin, 357 Shelburne Drive, stated that his residence is the closest to the proposed site. He stated that about 27 months has passed since the August, 2014, approval and the November Board meeting, and that things, including the IEPA, have changed, and that the IEPA website states that it no longer has the funds to operate a noise program, which is a major concern.

Chairman Parisi reminded the audience that the purview of the meeting is to hear testimony and receive evidence with respect to the proposed termination of the Special Use Permit, and the property being rezoned to R-1.

Mr. Cerwin said that his question is not about the use, it is that he is concerned that the site has strict rules and is monitored, and that is no longer true from a noise perspective, and with the financial situation of the State, what's next, who will enforce the strict rules.

Mr. LaPorte, 140 Arrowhead, stated that he is not opposed to a well-run business at that site, but because of the semi-compliance, late compliance, and non-compliance, if that's the mind-set of the business, then he supports the Village's application to terminate the Special Use permit.

Mr. Rhodes asked Mr. Zimmerman if he had any questions for either Mr. Cerwin or Mr. LaPorte. Mr. Zimmerman said no.

Mr. Rhodes asked Mr. McNees if he had any questions for either Mr. Cerwin or Mr. LaPorte. Mr. McNees said no.

Mr. Rhodes asked Mr. Zimmerman if he was going to call any rebuttal witnesses. Mr. Zimmerman stated that he did but that they weren't present.

Mr. Zimmerman stated there was off the record discussion whether to bring the Village Engineers to clarify who has authority in regard to storm water and wetland issues, and requested a continuance, to answer Plan Commission questions and rebut assertions of diligence in procedure on the part of Organic Soils.

Mr. Daniel said that it is fair, and up to the Village, if the purpose of continuation is to bring in an engineer as a rebuttal witness, and that he thinks that two engineers can testify as to what the DuPage County Storm Water and Wetlands ordinance says, but that he won't have a written summation that night.

Mr. Rhodes stated that he had a conversation with Mr. Daniel as to whether or not a written submittal should be presented to the Plan Commission so they can review documents before the next meeting and be prepared with questions, and asked if Mr. Zimmerman agreed. Mr. Zimmerman said if that's what the Plan Commission wants.

Mr. Rhodes asked when the next regularly scheduled meeting was. Mr. Bastian stated that it was January 9th, and that they may want to consider going to the 23rd, but that it was up to the Plan Commission, and that the meetings for January were scheduled for the 9th and the 23rd.

Mr. Rhodes said if a meeting was on the 9th, that submittals could be ready for a decision at the meeting on the 23rd. Mr. Daniel said that it did if the court reporter was able to turn around a transcript from the 9th in for briefing on the 23rd, and that the engineers' testimony is important. The Court reporter nodded yes.

Mr. Daniel asked Chairman Parisi if they were presenting the Village's Staff Engineer, and that there was a dilemma that is there is a wetland issue his consultant is out the week before he is gone on vacation, and that they might not be able to locate an engineer in time for the 9th.

Mr. Daniel asked if it would be a problem to start back on the 23rd. Mr. Zimmerman has a conflict on the 23rd, and asked if the Commission would consider meeting on a day other than a Monday.

Mr. Rhodes asked Mr. Daniel if he was the last one in the conflicting schedule. Mr. Daniel stated that he was out until the day before the 9th, and suggested the 24th or the 26th, or a weekend. Mr. Rhodes asked if he was available any time after the 9th. Mr. Zimmerman said that he was unavailable the week of the 16th, and suggested Tuesday, the 24th.

Chairman Parisi stated that the Commission is available on January 24th.

Mr. Breinig suggested a motion to reconsider continuing Case #16-2079 to January 24, 2017, as well.

Mr. Rhodes asked Mr. Zimmerman if he was going to have one witness, being the Village Engineer. Mr. Zimmerman said one, maybe two, but they would be Village staff.

Mr. McNees asked if the Village would go first and then he would have the opportunity to cross, then they would have their witness and give the Village an opportunity to cross. Mr. Rhodes said that the Village witnesses were for the purpose of rebuttal of Mr. McNees' and Mr. Oppermann's testimony.

Mr. Daniel said their dilemma was that there was indication, in Mr. Zimmerman's explanation, that the witnesses would be for rebuttal, but everything up to that point was new testimony, specifically jurisdiction under County Storm Water and wetland ordinance, or clean water act, etc.

Mr. Zimmerman stated that a large part of Organic Soils' testimony revolved around not being told that they had to do a wetlands survey, so it is not new testimony, and they will also have them testify as to the diligence of Organic Soils, that they are not going to be there to make legal arguments. Mr. Daniel said that they would have a witness in tow that night.

Chairman Parisi asked Mr. Breinig if he was suggesting that both cases be scheduled for the 24th. Mr. Breinig said yes, because of the circumstances in the other matter, they may be asking for a continuance or withdrawal, and that it would be quick.

Chairman Parisi asked for a motion to continue Case #16-2080 to January 24, 2017 at 7:00 pm.

Chairman Creighton made the motion and Chairman Christopher seconded the motion to continue Case #16-2080 to January 24, 2017 at 7:00 pm.

Chairman Parisi asked the Secretary to call roll.

The motion was passed.

The results of the roll call vote were:

Ayes:	6	Commissioners Creighton, Christopher, Petella, Spink, Tucek and Chairman Parisi.
Nays:	0	
Abstain:	0	
Absent:	1	Commissioner Meneghini

Chairman Parisi asked for a motion to change the meeting date for Case #16-2079 from January 23, 2017, to January 24, 2017 at 7:00 pm.

Chairman Creighton made the motion and Chairman Petella seconded the motion to change the meeting date for Case #16-2079 from January 23, 2017, to January 24, 2017 at 7:00 pm.

The motion was passed.

Chairman Parisi asked Secretary to call roll.

The results of the roll call vote were:

Ayes:	6	Commissioners Creighton, Christopher, Petella, Spink, Tucek and Chairman Parisi.
Nays:	0	
Abstain:	0	
Absent:	1	Commissioner Meneghini

NEW BUSINESS: Chairman Parisi asked Mr. Farace if there was any new business. There was none.

ADJOURNMENT:

At 10:20 pm. Commissioner Creighton moved and Commissioner Spink made the second to adjourn the meeting.

The motion passed by unanimous vote.

FOR THE COMBINED BOARD

Recorded and transcribed by,



Jane Lentino
Community Development Secretary

Minutes approved by Plan Commission on this 27 day of FEBRUARY, 20 17.


Chairman

