

VILLAGE OF ELM GROVE

13600 Juneau Boulevard
Elm Grove, WI 53122

LEGISLATIVE COMMITTEE

Tuesday, May 11, 2021 * 5:30 PM * Parkview Room
or on Zoom:

<https://us02web.zoom.us/j/81643062227>

Meeting ID: 816 4306 2227

+1 312 626 6799 US (Chicago)

AGENDA

1. **Call the Meeting to Order and Roll Call.**
2. **Review and possible action on meeting minutes.**
Documents:
[2021-02-09 LC Minutes DRAFT.pdf](#)
3. **Review and possible action on Ordinance for the Village right of way and public use.**
Documents:
[Right of Way Ord - draft 4.29.21.pdf](#)
4. **Review and possible action on Ordinance to allow beekeeping.**
Documents:
[Beekeeping Ordinance - draft 3.2.21.pdf](#)
5. **Other Business**
6. **Adjournment**

Any person who has a qualifying disability as defined by the Americans with Disabilities Act who requires that the meeting or materials for the meeting has to be in an accessible location or format must contact the Village Clerk, Michelle Luedtke, at 262-782-6700 or 13600 Juneau Boulevard by 3:00 PM Friday prior to the meeting so that any necessary arrangements can be made to accommodate your request.

NOTICE: It is possible that members of, and possibly a quorum of, other governmental bodies of the Village may be in attendance at the above stated meeting to gather information. No action will be taken by any governmental body at the above stated meeting other than the governmental body specifically referred to in the above notice.

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Call to Order

The meeting was called to order by the Chair at 5:32PM.

Roll Call:

Trustee Domaszek (Chair)
President Palmer
Trustee Haas
Committee Member Jodie
Committee Member Book (Absent)
David De Angelis, Village Manager
Hector De La Mora, Village Attorney
Thomas Harrigan, Zoning Administrator
Michelle Luedtke, Village Clerk/Deputy Treasurer

Review and act on meeting minutes dated 10/13/2020.

MOTION BY COMMITTEE MEMBER JODIE, SECOND BY PRESIDENT PALMER, TO ACCEPT THE MEETING MINUTES AS PRESENTED.

ALL WERE IN FAVOR. MOTION CARRIED.

Review and possible recommendations on Chapter 134 Electrical Standards.

Chair Domaszek referred to the packet documentation and asked Zoning Administrator Harrigan to summarize.

Zoning Administrator Harrigan explained the process and indicated what is approved tonight will go to the Village Board for approval and then back to the State.

Trustee Haas asked about low voltage wiring in lines 49 and 50.

Manager De Angelis indicated this is part of the new State code.

Trustee Haas added he thinks the Village will need to inform the resident about this change.

President Palmer indicated this isn't ideal for the homeowner, but it is what the State is requiring.

MOTION BY TRUSTEE HAAS, SECOND BY PRESIDENT PALMER, TO APPROVE RECOMMENDATIONS ON CHAPTER 134 – ELECTRICAL STANDARDS.

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ALL WERE IN FAVOR. MOTION CARRIED. ITEM GOES TO VILLAGE BOARD FOR FINAL APPROVAL.

Review and act on amendments to §335-30 Planned Development Overlay District.

Chair Domaszek referred to the packet material and went through the versions.

Trustee Haas took the May version and added technical corrections. He took three related concepts sprinkled throughout and put them back together. He took what the staff proposed and made it more readable. He did not make changes he felt were necessary. He does have concerns. We took a lot of things out that should be there. He would like to know why we are doing this.

President Palmer added that they were asked as a group to get a more streamlined draft comparable to all other communities we looked at. The ordinance we have in place was created in order to facilitate the Watermark and save the St. Mary's old church. This worked for that triangular property. We have all kinds of detail in the existing that most people are not able to figure it out. The goal of rewriting it is to make it more clear and maximize the Village Board authority as it pertains to projects.

Chair Domaszek indicated his only concern was the minimum lot requirement. He would like to be able to look at any size lot. This would show them only major/larger projects. He would be interested in seeing the smaller projects that have just as big of an impact.

Trustee Haas indicated he would like to re-add the calculations for density from the old code. He believes there should be some sort of a limitation. He would also like to see architectural design components.

President Palmer suggested the 6.10 draft could reinsert a maximum density, but does not believe it is necessary.

Trustee Haas indicated a residential maximum for a PUD would be 22 units per acre. Trustee Haas asked that they go to page 3 of the existing ordinance in section F, clean it up, and put it back in the new version. He does not believe the equation is difficult for the resident.

President Palmer said we can still have the same effect with these two main points: 1.) Include a maximum for each acre of the PUD. 2.) The new draft is

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written so there are no underlying rights. All PUD items are negotiable and the Village Board can alter or reject.

President Palmer continued stating this does not give any innate rights to a developer. This would simplify the code as it is written now.

Trustee Haas would like sections F(1), (2), and (3). He believes we need more guidance for what you are entitled to and when you are entitled to it.

Chair Domaszek agrees with Neil on this to take out the entitlement. He would like enhanced density placed in 3 A-D. He would put all of it in page 4, section E, of the 6.10 draft. Line 127.

Trustee Haas believes the concept of enhance standard does not make any sense without the first portion of the ordinance.

President Palmer clarified everything is negotiable and we will never give you anything above 22 per acre.

Trustee Haas would like us to use a better word than “enhanced”.

Chair Domaszek indicated anything with a PUD needs to meet all of these enhanced provisions. If they are not enhanced provisions, they can be simply called provisions.

President Palmer cited “we expect all proposed developments to be under the highest quality...” from page 3 of the ordinance, period. He is ok with a minimum – but no one is going to go for the minimum. Residential aspects will have a maximum 22 units per acre allowed. Period. Even if they only come in with 12, we will hold them to high standards. Period. The other aspects is to be able to mix uses, change setbacks, side yards, etc. The question the public has is typically about density and parking. That is where we would like to have veto rights. Everything is negotiable.

Trustee Haas reaffirmed in order to have a PUD, no matter the density, the builder would have to have high quality.

President Palmer confirmed.

Trustee Haas said we do not hold people to this.

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President Palmer stated that people ask how you measure enhanced quality. It is a complete word salad of meaningless nothing. With this, under a PUD, we wouldn't give you a minimum, but we will hold you to build to the highest quality, material, and value to make it clear. This gives important clarification to the building board. Don't have a calculation we never use.

Trustee Haas brought up Elm Grove Heights on Bluemound.

President Palmer indicated this handled differently with unique specifications. We have very little development in Elm Grove. We want to make it clear from day 1, we want it to be the highest quality they can make it.

Chair Domaszek believes anything with a PUD should be made with the highest quality.

President Palmer indicated if they want to keep it in the ordinance, they can. Instead of saying enhanced density, take all of the points and say we expect this from any project.

Trustee Haas would like "residential density". He would like line 127 eliminated entirely. Paragraph 2 becomes 1. Keep 3 and make it "density". Play with the language of each of these sub paragraphs because it uses the term enhanced density.

President Palmer would like to see a draft with these changes next time. These are all of the things we are going to consider on each of these meeting groups; building board, plan commission, or/and Village Board.

Chair Domaszek asked for the word version so he can combine the ideas together.

Trustee Haas asked about 4(f) – what do they want to do with that. The concept was if you have a mixed use, how do you calculate the residential density? If the first floor is commercial, you would reduce the number or residential.

President Palmer repeated that everything is completely negotiable. Each projects stands on its own and the Board can make the final determination on the unique properties.

Chair Domaszek asked for a general statement about if it is mixed use, the density would be reduced.

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Trustee Haas is concerned with it all being “negotiable” without a basis. What is the criteria for saying no, you are not entitled to the maximum density. If you want to take into account the commercial mixed use, it should be in 3d. If there is a mixed use, it will affect the density. This gives us the ammunition to tell a developer no - it becomes non-negotiable.

President Palmer repeated that there is no right and every decision is at the discretion of the Board. He doesn’t have an issue with strong language regarding density and what is allowed. To say the amount of residential density is capped at 22 per acre, but it may be significantly lowered based on the amount of commercial development on shared acreage.

Trustee Haas indicated we should remove section 4 and include language in section 3.

President Palmer asked about “PUDD”. It was clarified the word “overlay” was removed and this was a Development District – with a double D. President Palmer went on to page 5, line 148 – to spell out what MMSD is for those who do not know. We should also include any successor agency. Line 185, 3(b) – remove “the” for school capacity.

Chair Domaszek asked about the old PUD notice requirements, but he believes any time there is a meeting, we should give notice to the neighbors.

Attorney De La Mora indicated the notices given are typically set forth by the zoning laws. In this community, anyone who comes to any meeting with zoning gets to talk. That is not the way it is done in most communities. This can be difficult to manage.

Zoning Administrator Harrigan was unsure if the 300 foot rule typically set forth for zoning would apply to this.

President Palmer stated we already give notice of the meeting and would not need to mail the items to those surrounding a project. He would hate for someone not to get a notice and for this to become an issue for the project. He is in favor of the notices for the hearings, but not for everything else.

Trustee Haas indicated this would be a lot of notices. Instead, we could do it at the filing of the petition. They could then monitor the website themselves. They can also sign up for the “notify me” for meeting notices. Chair Domaszek agreed.

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Attorney De La Mora added that when we give a project within 300 feet, others outside of those areas may also have concern and not be notified. We could include a requirement regarding the item being posted online.

President Palmer added we can include an ordinance for the requirement to post online and offered suggestions on the name of the notice page.

Trustee Haas doesn't have a problem with it, but we will have to have better management of our website. We have old documents on there.

President Palmer indicated people still look at that list for historical purposes.

Trustee Haas thinks the list will be long including residential items. We can take off items which are not current. Another issue Trustee Haas has is the allowed uses include on the original ordinance (section C) which are not on the new version.

President Palmer gave an example of how this could be important.

Attorney De La Mora clarified the reason for zoning. Furthermore, he indicated issues may include spot zoning. People might be more apt to request a PUD instead of a zoning change.

President Palmer indicated he would like to keep the whole section C from the original and put it in somewhere in the new version. Trustee Haas agreed.

Attorney De La Mora gave an example of a residential lot getting an application for mixed use.

Manager De Angelis clarified the term PUD vs PDO.

Attorney De La Mora clarified that a PUD is still considered an overlay. You may grant a development rights, but if a developer sits on it and doesn't go anywhere, you have a mechanism with the overlay to make it go away. You have rights with the underlying base. We should not allow anyone to think we are creating a new district.

President Palmer would like this up at the top.

Attorney De La Mora brought up the question on what is the highest quality. He would like the applicant to indicate the highest quality in their application.

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President Palmer suggested not using the word “highest” but “high”. You are never going to win that argument of what highest is.

Trustee Haas stated the term highest quality is not abstract. We know where to look for the comparisons within the Village.

President Palmer added “to meet or exceed the highest quality in the Village”.

Manager De Angelis added commercial is commercial, and residential is of the highest quality stock. Furthermore, the commercial would not include residential.

President Palmer said we would not indicate that commercial is of any less quality.

Trustee Haas moved to line 5-7 of 6.10 – he would like to know what we are putting in there for the items we are going to quantify. Are we going to set dimensions?

Chair Domaszek believes this is unlimited with a PUD how it is written. This needs to be clarified and well understood. He will take items from the existing ordinance and drop it into the new ordinance.

Attorney De La Mora indicated this will give the Village more leverage; specifically if the developer does not continue with the project.

Trustee Haas wants something to include that this is compatible with the adjacent neighborhoods.

Manager De Angelis indicated this starts on line 12.

Trustee Haas wants the criteria listed.

Chair Domaszek reiterated line 181. He looked through the document and indicated it could be worded better in the next version. He would like something added under C1 for this.

President Palmer indicated the two memos for tomorrow’s meeting has bullet points that exist that we can use here as well.

Trustee Haas would like those documents on the next meeting for reference. Another concern he has is the minimum acreage.

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Chair Domaszek and President Palmer confirmed they don't want the minimum acreage. Trustee Domaszek indicated most of the lots would not be able to make the minimum for a PUD.

Trustee Haas does not believe a PUD should be used on things that may not be as special.

President Palmer clarified we want to make this more flexible, clear, and understandable – that would give the board authority over all projects.

Trustee Haas talked about razed sites.

Attorney De La Mora added that as you think about this, think about the increase in application you will receive in the residential areas. People like himself would look to the PUD to avoid applying for variances, setbacks, etc. Technically, if we don't restrict that, we will expend a great deal of time turning people away and creating a criteria. If you invest \$300k for a lot, you will apply for one.

President Palmer stated this would not pass the conceptual meeting. No project would be approved no matter if they met the criteria if this new ordinance allows us to say no to anything.

Manager De Angelis added if we put that this does not apply to single family residential property that would get rid of this issue.

President Palmer wants it clarified that the applicant has no vested rights at any point in this process at the top of the ordinance.

MOTION BY PRESIDENT PALMER, SECOND BY CHAIR DOMASZEK, TO HAVE STAFF COMPILE THE RECOMMENDED CHANGES, GET RID OF THE 5/27/2020 VERSION, AND BRING BACK A CLEAN VERSION TO THE NEXT LEGISLATIVE MEETING.

ALL WERE IN FAVOR. MOTION CARRIED.

Other Business – President Palmer would like to know where we are with the rest of the zoning code changes. Manager De Angelis indicated B-1 and B-2 are in draft. No other changes to the conditional use have been noted.

Adjournment

There was no further business.

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MOTION BY PRESIDENT PALMER, SECOND BY TRUSTEE HAAS, TO ADJOURN THE MEETING.

ALL WERE IN FAVOR. MOTION CARRIED. MEETING ADJOURNED AT 7:12PM.

Minutes transcribed by: Michelle Luedtke

Minutes Approved on:

37 **Section (3) Existing Items within the Right of Way.**

38 (j) Anything currently in place in the ROW without an Indemnification Agreement, prior to the
39 enacting of this ordinance, with the exception of any items that have been or may be deemed a
40 hazard by the Village, may require removal under the authority of the Public Works Director, or
41 designee, if it conflicts with any public works maintenance projects, repairs or any reason which
42 restricts the stated use of the ROW. Past or future inaction on the Village's behalf does not
43 constitute consent and the Village of Elm Grove does reserve the right to remove said item(s) and
44 pursue legal action as necessary. There will be reasonable notice of such removal unless deemed
45 an emergency. There is no assumption of liability by the Village for structures or plantings placed
46 in the ROW by a homeowner without the consent or approved ROW Indemnification Agreement
47 from the Village of Elm Grove.

48 **Section (4) Indemnification Agreement.**

49 (k) An Indemnification Agreement is required for the placement by a property owner of
50 any plantings, light poles, landscape hardscaping, or anything within the ROW outside of
51 the twenty (20) foot setback from the road edge or beyond the top of slope of the ditch.

52 (l) An Indemnification Agreement Application must be completed and submitted to the
53 Public Works Director who will review and make a recommendation to the Public
54 Works/Utilities Committee for their review and action. The Village reserves the right to
55 deny any request deemed unacceptable for any reason.

56 (m) A ROW Indemnification Agreement will only be allowable under certain
57 circumstances, including but not limited to installation of underground sprinkler systems
58 and electric dog fences inside of twenty (20) feet from road edge zone. The Village
59 reserves the right to deny any request deemed unacceptable for any reason.

60 **Section (5) Excessive slopes.**

61 (n) Excessive slopes of drainage ditches is defined as any ditch which exceeds 2:1 slopes.
62 Property owners who have concerns over the slope of a ditch which meet this criteria may
63 request, in writing, a review of the ditch.

64 (o) The Village is not required to alter any ditch and there is no implication of consent for any
65 further action.

66 (p) Any modifications the Village is able to perform will be done within the general work
67 schedules and placed in order of other already pending projects.

68 (q) Only the most severe conditions will be entertained by the Public Works Committee for
69 possible approval.

70 (r) Pavement, pathway or other public Works Projects that include regrading ditches for storm
71 water conveyance, road reconstruction, etc. will address most of these issues at that time and
72 any trees removed will be replaced by the Forestry Department as deemed necessary at some
73 point in the future.

74 **Section (7) Maintenance.** Property owners adjacent to the ROW are required to maintain the

75 area as they would their private property, including but not limited to, mowing grass, leaf and
76 debris clean up, sod damage repair (unless caused by a Village plow and reported in a timely
77 manner) and any other maintenance required to prevent erosion or blockage of the conveyance
78 of storm water or obstruction of signage or motorist sight obstructions.
79

80 **Section (8) Inspection.** The Village of Elm Grove reserves the right to inspect any ROW
81 or public property. Expenses of inspections shall be paid by the resident if any violations of
82 municipal ordinances are found.

83 **Section (9) Violation and Penalties.**

84 (s) Conduct not in compliance with this Section is prohibited.

85 (t) Violation of the terms of this Section shall result in a written warning to the property
86 owner, subject to the appeal to the Board of Trustees of the Village of Elm Grove. Failure
87 to adhere to the terms may result in a municipal citation.

88 **Section (10) Compliance with laws.** All applicable laws, including applicable zoning
89 requirements, must be followed. In the event of a conflict between this Article and other
90 provisions of this Code or applicable zoning requirements or other laws, the more restrictive
91 shall apply. If any section, sentence, clause, phrase or portion of this ordinance is for any reason
92 held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be
93 deemed a separate, distinct and independent provision, and such holding shall not affect the
94 validity of the remainder of such ordinance.

95
96 Adopted this ____ day of _____, 20XX by the Board of Trustees of the Village of
97 Elm Grove, Waukesha County, Wisconsin:

98
99 _____
100 Neil H. Palmer
101 Village President

102
103
104 ATTEST:
105
106 _____
107 Michelle Luedtke
108 Village of Elm Grove Clerk/Deputy Treasurer
109 Waukesha County

- 39 (f) Hive - a (one) container in which a Colony resides.
- 40 (g) Honey Bee - all life stages of the common domestic honey bee, species *apis*
41 *mellifera*, bred for gentleness and non-swarming characteristics, and excludes any
42 known Africanized hybrids.
- 43 (h) Village of Elm Grove Beekeeping Information Card- Information card which is filed
44 with the Clerk's Office allowing the Village of Elm Grove to have all important
45 contact information related to permitting beekeeping in the Village of Elm Grove.

46 **Section (2) Village of Elm Grove Beekeeping Information Contact Card Required.**

- 47 (i) No person may engage in Beekeeping, or the maintenance of Colonies or
48 Hives, within the Village of Elm Grove without completing a Village of Elm
49 Grove Beekeeping Information Contact Card for the locations at which Hives
50 or Colonies are maintained, and a Village of Elm Grove Beekeeping
51 Information Contact Card shall be required for each location.

52 **Section (3) General Rules.**

- 53 (j) No person may keep Colonies or Hives in the Village of Elm Grove in any way
54 that causes a public nuisance, causes an unreasonable risk of physical harm to any
55 person or domestic animal, unreasonably interferes with normal activities of
56 persons or domestic animals, or unreasonably interferes with the normal use and
57 enjoyment of any private or public property. Compliance with all of the
58 requirements of this Section shall create a rebuttable presumption of compliance
59 with this subsection.
- 60 (k) No person may intentionally keep colonies or hives of bees other than Honey
61 Bees, except for wild bees that select their hive location naturally.
- 62 (l) All Colonies shall be kept in a well maintained Langstroth, Top Bar, or Warre,
63 which shall be maintained in sound and sanitary condition.

64 **Section (4) Location of Hives.**

- 65
- 66 (m) Hives shall not be located less than 20 feet, measured at the closest points, from
67 the boundary of the property on which the Hives are located and any other
68 property, unless the properties on either side of the boundary are owned by the
69 same individual or entity, or unless the then-current owner of the adjacent property
70 gives written permission for the hives to be nearer than 20 feet.

71 **Section (5) Maximum Numbers of Hives Allowed.**

72 No person shall keep more than the following numbers of Hives in the Village:

- 73 (n) Parcels one-quarter acre or less, two (2) Hives.
- 74 (o) Parcels larger than one-quarter acre but no larger than one-half acre, four (4)
75 Hives.

- 76 (p) Parcels larger than one-half acre but no larger than one acre, six (6) Hives.
- 77 (q) Parcels larger than one acre, eight (8) Hives.
- 78 (r) Regardless of parcel size, if all Hives are located at least 200 feet in any direction
79 from all boundary lines of the parcel on which the Hives are located, there shall be
80 no limit to the number of Hives.
- 81 (s) There is the exception for the rarely required additional temporary small hives such
82 as queen mating nucs or captured swarm hives that will be temporary until homed.

83 **Section (6) Aggressive Behavior.** The Beekeeper must use all practical skills to prevent
84 aggressive behavior.

85 **Section (7) Maintenance.** Beekeepers shall maintain all Hives and Beekeeping Equipment in a
86 good and sanitary condition, and shall observe at all times the best accepted practices
87 recognized within the beekeeping industry including assuring a constant supply of water.
88 Beekeepers shall ensure that no honey comb or other materials that might attract wildlife,
89 rodents or vermin are left open on the property. Upon removal from the Hive, all such
90 materials shall be promptly disposed of in a sealed container, or placed within a building or
91 other bee-proof enclosure.

92

93 **Section (8) Inspection.** The Village of Elm Grove reserves the right to inspect any
94 property that has a Village of Elm Grove Beekeeping Information Contact Card on file
95 with the Village of Elm Grove. The Village of Elm Grove reserves the right to ask for
96 assistance from experienced Beekeeping Owners to assist in the Inspection of Beekeeping
97 activity. Expenses of inspections shall be paid by Beekeeper if any violations of the
98 ordinance are found.

99 **Section (9) Violation and Penalties.**

- 100 (t) Conduct not in compliance with this Section is prohibited.
- 101 (u) Violation of the terms of this Section shall result in the revocation of the
102 Beekeeping at the location. Upon revocation, all Beekeeping at the location
103 shall cease, subject to the appeal to the Board of Trustees of the Village of
104 Elm Grove.
- 105 (v) Any person who keeps bees without a Village of Elm Grove Beekeeping
106 Information Contact Card on file with the Village of Elm Grove, which is
107 required by this Section shall be subject to general penalties as established by
108 the Board of Trustees of the Village of Elm Grove, and all Honey Bees,
109 Hives and Colonies belonging to the person or under the person's control
110 shall be removed from the Village or destroyed.
- 111 (w) Any person having a Village of Elm Grove Beekeeping Information Contact
112 Card on file with the Village of Elm Grove, required by this Section who
113 violates this Section shall, in addition to having his or her privilege revoked,
114 be subject to the penalties described in Section 9 of this Code, and in addition,

115 upon second and subsequent violations of this Section, all Hives and Colonies
116 belonging to or under the control of the Beekeeper shall be ordered removed
117 from the Village.

118 **Section (10) Compliance with laws.** All applicable laws, including applicable zoning
119 requirements, must be followed. In the event of a conflict between this Article and other
120 provisions of this Code or applicable zoning requirements or other laws, the more restrictive
121 shall apply. If any section, sentence, clause, phrase or portion of this ordinance is for any reason
122 held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be
123 deemed a separate, distinct and independent provision, and such holding shall not affect the
124 validity of the remainder of such ordinance.

125
126 Adopted this _____ day of January 2021 by the Board of Trustees of the Village of Elm Grove,
127 Waukesha County, Wisconsin:

128
129 _____
130 Neil Palmer, Village President

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132
133 ATTEST:
134
135 _____
136 Michelle Luedtke
137 Village of Elm Grove Clerk
138 Waukesha County