

# Villagers Divided Over Rezoning

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but that action was not because a quorum was not present.

Between the December meeting and Jan. 11, Smolek explained, the village president consulted with a number of attorneys outside the village and concluded the zoning board lacked authority to rezone property and the May 11 vote was invalid.

WARDLE agrees the May 11 vote was improper and says the first official vote ever taken was the Jan. 11 approval by the council.

He has filed an amended appeal to the courts asking for a ruling that the council acted legally Jan. 11 in approving the rezoning.

If the courts rule the Jan. 11 decision was legal, Wardle added, the lawsuit will be withdrawn. The original

lawsuit asks the court to: 1-declare invalid the portion of the zoning ordinance which sets the zoning of Outlot D as residential; and, 2-declare the entire village zoning ordinance as unconstitutional.

Goldman disagrees with the interpretations given by both Smolek and Wardle and so stated Monday night. Goldman says it is his opinion that the council and zoning board are one and the same and any action taken by the zoning board should be considered as council action.

The statute provides that the council may sit as a zoning board of appeals, explains Goldman. Even though at a particular moment the members may be sitting as a zoning board, he argues, the vote taken is still council action.

THE CHAIRMAN of the village planning commission, Norman Kraider, argues that the best protection for Outlot D is for the village to decide how it will be developed rather than waiting for incorporation with the new city council deciding the parcel's fate.

Wardle also argued that once Wood Creek joins the incorporation the new city council will be seeking new taxes based and be favorable towards rezoning land along Northwestern Highway.

Smolek said he felt the village would be unable to defend itself against the lawsuit filed by Wardle. That claim was countered by Goldman who stated he was confident the residential zoning could be defended.

Goldman added that in 1963 the Supreme Court upheld residential zoning of Outlot D and, at that time, had all the information from the state concerning expansion of Northwestern into a freeway.

Answering questions from the audience, Smolek said he will ask the council Tuesday night (Feb. 1) to hire a new attorney. His choice, Smolek

added, will be to retain an attorney who lives outside the village to keep emotion from entering any legal advice given.

WARDLE challenged opponents to intervene in the lawsuit on two conditions:

1. That opposing residents intervene quickly; and,

2. That all parties in the lawsuit stipulate to agree with the court's ruling on whether the Jan. 11 council vote was proper.

He also agreed to enter into a court agreement binding the developers to construct what has been proposed in site plans.

A resident pointed out the council had 20 days from the time it was served with the lawsuit on Jan. 10 in which to answer, giving it sufficient time to hold a public hearing before making a decision.

Smolek answered that the issues had been aired at the May 3, 1971, public hearing and any rehearing would have little bearing on the decision the council felt it had to make.

A resident said a breach of trust now exists because council members May 11 voted to deny the rezoning and 11 to approve, regardless of whether they were sitting as a zoning board or council.

He described a second issue as being whether "this outpost of democracy, a leftover from the New England town meetings, can function properly in its apparent last year of life. I think we have failed dimly in this respect."

Goldman denied he had recommended defending the zoning in court to profit from legal fees, an accusation made last week by Inman. He observed that he gets a \$500 a year retainer fee from the village and in five years has been paid only about \$5,000 for litigation.

Wardle commented the only logical use for Outlot D, other than office, is for a church and a church would be the same size and have the same number of parking spaces as his development but would not be taxable.

Responding to an accusation that the meeting was stacked with speakers in favor of the rezoning, Owen said he had Barb Anderson, Sue Brown, Al Albertson to speak for the opposition but both declined because of the pending litigation.

Councilman William Ortmann objected that secret meetings were being held by opponents and described the

first petition as containing false statements.

THE MEETING referred to by Ortmann was one held Sunday afternoon in the Sarah Fisher Home attended by some 100 residents, including Abbott, Albertson, William Toth, Krandle, Goldman and Reuben Perin, village road administrator.

The residents at the meeting agreed to seek intervention in the lawsuit as party defendants with the village to ask that the council vote according to the wishes of the majority of residents.

It was also agreed to support a slate of officers opposed to the rezoning and hope that the March 13 election will result in a new council willing to defend the lawsuit.

It was pointed out then that a three-fourths majority vote of the council is required when more than 20 per cent of the residents within 300 feet of the proposed rezoning are opposed.

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**Dental Week Is Proclaimed**

FARMINGTON Mayor Wilbur Bruberton of the City of Farmington has proclaimed Feb. 6-12 as Children's Dental Health Week in the city.

Purpose of the week is to stress that the future is greatly dependent upon the good health of children, the citizens of tomorrow.