

ATTACHMENT 4

To: Winnetka Village Council
From: Lynn Hanley
Date: October 12, 2026
RE: Proposed Open Space Institutional Zoning Amendment

I have been on the ZBA for nearly 8 years. I am a zoning and land use attorney by trade, but I have retired from legal practice, and I teach constitutional law and policy at Loyola University.

Bob Dearborn and I met recently, and he invited me to participate in the ad hoc commission to rewrite the zoning ordinance. If you have ever reviewed the ZBA minutes, you might know that for the past several years I have been vocal about certain changes to the zoning ordinance that I would like to see, particularly regarding how the Village zones its public uses, such as parks, beaches, and schools. So, I am excited about the zoning ordinance rewrite. However, when Mr. Dearborn and I met, I asked him to explain what the Council's thought process was behind this Open Space Institutional amendment, what purpose it was designed to serve and the outcome the Village hoped to achieve.

Mr. Dearborn explained the Village's desire to preserve open space. And he expressed a concern that if those open spaces were sold, the Village would lose that open space. I told him that if I was on the ad hoc zoning rewrite committee, this proposed zoning amendment would be one of the first things I would toss out.

While the Comprehensive Plan does suggest that the Village should "encourage the enhancement of public spaces" and "amplify open spaces," that is not a vindication to use the zoning ordinance to affect the sale of public use properties. If the Village's objective is to prevent publicly owned open space from being sold, using the zoning ordinance is an indirect and potentially constitutionally problematic way to accomplish that objective. I would encourage the Village Council to consider other options such as intergovernmental agreements or conservation easements rather than amending the zoning ordinance for such a purpose. If the objective is instead to regulate the physical character or use of those properties, the ordinance should be crafted to regulate the properties in a way that is appropriate to their actual *character and use* rather than, as it is proposed now, to condition regulatory treatment on its *ownership*.

I agree that we need to preserve our open space. I think you will be hard pressed to find more than a few residents who do not want to preserve our open space. But I think this zoning amendment is the wrong approach for several reasons.

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1. Under the proposed zoning amendment, the OSI zoning designation stays in place when a municipality or government district (park, school or library) sells all or a portion of its publicly owned property to a private owner. A private owner would own property in a zoning district in which ordinary residential, commercial and most private development would no longer be permitted as of right, and in which the principal permitted and special uses are overwhelmingly municipal, institutional, or recreational – essentially, public or quasi-public in character.

Section 17.51.040 of the proposed ordinance states, “In the event that any property rezoned to the OSI Open Space Institutional District is *no longer publicly owned*, subsections A and B of this Section will no longer apply and the property will be subject to all provisions of this Chapter.” (Emphasis added). This ownership-triggered restriction is intentional. Any previously granted special use or any use that existed on the property prior to the sale to a private buyer would be expunged, and only “essential public uses” would be permitted by right. Thus, the property receives one regulatory rule while publicly owned and a different, more restrictive regulatory rule solely based on ownership, private ownership.

Equally significant, if a public owner sells property subject to the OSI designation, a new private owner who does not intend an “essential public use,” or an institutional, recreational or other quasi-public use under the special use application, would be required to apply to the Village to rezone the property to Residential or Business or Commercial, thereby restoring the old (or possibly a permitting a new) zoning designation. If the Village rejected the requested rezoning and determined the OSI designation should stay in place, the private owner could make a legal challenge to the continued application of the OSI classification. The Village would then be required to defend the classification against an as-applied challenge under Illinois zoning law, including the requirement that the classification bear a substantial relationship to the public health, safety, comfort, morals or general welfare. The Village will be in the position to argue that rejecting the rezoning and retaining the OSI classification to limit the use to public or quasi-public is reasonable even after the previous public use owner (park, school, library district, etc.) is no longer the owner.

That is a tough legal standard to meet. And it is particularly tough, if the district or municipality selling the property has complied with all applicable statutory requirements for disposition of its surplus property and has affirmatively determined that the property is no longer needed for its public purposes. That is, the district or municipality has demonstrated that there is not a public use for the property.

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It is also a tough argument to make if the so-called “open space” is not truly “open” because it is already improved with an institutional building. For example, if D36 decided to sell Greeley School because it is no longer needed due to demographic shifts and a new owner opted to keep part of the building and use it as a single family home, which would be compatible with its surrounding uses, it would be difficult for the Village to legally justify denying a reasonable rezoning request.

And, finally, the Village’s legal rationale to reject a rezoning application loses credibility with this amendment process rather than as part of a more comprehensive zoning rewrite procedure. The zoning rewrite procedure, which the Village has already initiated, would include a thorough assessment of all the various public use properties in the Village. Because the Village admittedly missed several properties and re-noticed this amendment to including Village Hall and the public works property, it has already demonstrated that it did not undertake a thorough assessment. The Village has also, intentionally or not, omitted other publicly owned properties, including the Village parking lots (which are public “open space”) and the three Metra stations that are owned by the Regional Transportation Authority. If the Village intends to use this amendment to regulate public open spaces, then all government properties should be included. Section 17.51.010 states that the OSI classification applies to “public open spaces, parks, beaches, recreation areas, natural areas, schools, government facilities, and other similar public, and civic lands.”

The ultimate consequence of this amendment is to subjectively re-classify select publicly owned properties as OSI and retain the OSI designation, as well as the public and quasi-public use restrictions, even when ownership of the property changes to private. Then, if a private owner is unable to rezone the property back to its prior zoning classification, the Village may face the possibility of an as-applied constitutional zoning challenge and, depending on the property's remaining economically viable uses and the circumstances of the zoning restrictions, a regulatory-taking or inverse-condemnation claim.

2. As proposed, the amendment lumps all publicly owned property (minus a few overlooked Metra and Village-owned properties) into the OSI district. There is no distinction between properties such as golf courses, parks and beaches, which have few if any structures, and properties with more intense institutional uses such as schools, recreation, library, or police and fire. And those uses are very distinct in function, physical character, use and relationship to their surrounding neighborhoods.

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A single district cannot possibly provide meaningful and straightforward regulations for all those differences.

3. Likewise, as proposed, the OSI district does not provide any bulk regulations and in fact, states that existing residential, business or commercial bulk regulations would continue until phase 2, the zoning rewrite process that Village is simultaneously undertaking.

Creating a new zoning district that grandfathers the existing uses without changing the bulk regulations is little more than a name change. (And reinforces the interpretation that this zoning amendment is more about ownership than regulating the intensity of the use.) Every school, recreation, library or Village building will still have to conform to the incongruent bulk regulations of its current district. So, there is nothing in this proposed new zoning district to correct the absurdity of New Trier High School having the same height and bulk limitations as a single-family home.

These buildings, these institutional uses, should be zoned distinctly from residential, business or commercial uses with their own bulk regulations that match the use on property. But again, a single district cannot provide meaningful and straightforward regulations for all those different uses and varying intensities of use.

Based on the language in the proposed amendment and conversations with Mr. Dearborn, I understand that other amendments may be forthcoming (after the approval and enactment of this amendment), such as making a distinction between true open space and institutional uses and eventually, adding bulk regulations. Which begs the question – what is the urgency? Why pass this amendment if we are already prepared to undertake a comprehensive rewrite of the zoning ordinance in the very near future?

But the swift and imprudent process is distinct from my fundamental concern about this proposed tactic to zoning publicly owned properties. It is both the process and the policy in this proposed amendment that underlies my statement to Mr. Dearborn: I would toss out the whole OSI zoning district if I were involved in the rewrite.

The Village Comprehensive Plan does call for consideration of a specific zoning district or standards for open space. But there are better and more effective options to apply zoning regulations to publicly owned and public use properties that comply with the goals of the Comprehensive Plan. And those options should be explored and considered as part of the zoning rewrite process. Public use properties come in many shapes and sizes. We have a multitude of taxing bodies in Illinois, and they have different property uses and, as explained above, they cannot and should not be lumped into one zoning district or even two.

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One alternative to the OSI district, may be to create property-specific, planned-development regulations that expressly provide for termination or modification upon cessation of the use, with the underlying zoning classification remaining in place. A PD would create a catered “mini-zoning ordinance” specific to that property.

- For example, New Trier would remain zoned R4, but a PD would provide the setbacks, height limitations, impervious surface restrictions, parking requirements etc. appropriate for a township high school but still meet the Village’s zoning and planning goals. Any new construction or changes to the existing structures or property configuration would require an amendment to the planned development, which would trigger a zoning review and compliance with our zoning standards.
- But what New Trier requires as a school is different from what Greeley school would need. Greeley is smaller in size and scale and doesn’t have the athletic facilities or parking needs that NT requires. So, Greeley would have its own PD that suit its property size and school requirements.
- And the library would have its own PD. And the public works facility would have its own. And Tower Beach and Lloyd Beach and every beach would have its own PD, because they are all different – in size, use and purpose.
- In the event the government district or municipality determines it can or should sell its public property and the use changes, the PD evaporates. Accordingly, if New Trier (after going through the necessary legal processes to justify the disposal of its publicly owned property) decides to move entirely to the Northfield campus and sell the Winnetka campus to a private developer, that property would revert to R4 automatically based on the reversion language in the PD. No rezoning application or process is necessary.
- And, notably, even after the PD disappears, any development or improvements to the property proposed by the new private owner would still be within the zoning jurisdiction of the Village. The Village would still have to approve any subdivision proposal if the school (or park or library district) sold only a piece of its property. Or if the whole property were sold, a developer would have to submit a subdivision plan for any significant development approval.

But this is just one suggestion, and there are other options available that the Village should take the time to explore and thoroughly consider. Nevertheless, I strongly encourage the Council to recognize the distinction between regulating public property while it is publicly owned and preserving the property as open space after it has ceased to be publicly owned.

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Those are different governmental objectives. If the Village's objective is to ensure that some properties within our Village remain public open space regardless of future ownership, the Council should consider whether acquisition, conservation restrictions, intergovernmental agreements, or other property-specific mechanisms are more appropriate. This amendment is not the proper legal vehicle for such an objective. If the Village's objective is instead to establish appropriate land-use and development standards for public and institutional properties, those standards should be developed based on the actual characteristics and uses of the individual properties. This amendment instead relies on a zoning classification tied to ownership, becoming more restrictive if no longer publicly owned. Consequently, I do not agree with the Village's use of the zoning ordinance in this manner, and I do not endorse this amendment.