

League of Women Voters of the Elgin Area

Kane County Forest Preserve District Study

2013 Report

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Introduction: A Look Back at the 2012 Brunner Study

In March 2012, The League of Women Voters of the Elgin Area released a two-year study of Potential Gravel Mining in the Brunner Forest Preserve of Kane County. The study was undertaken after strong local reaction to quiet discussions by the Kane County Forest Preserve District of the possibility of mining for gravel in the newly purchased \$40 million preserve. The way in which the idea of gravel mining in Brunner Forest Preserve came to public attention in early 2010 was a strong indicator of how the story would unfold. It was not put out for public discussion as an economic or land use question. It leaked out. It came out in bits and pieces, with information and misinformation, accusations and denials, and above all, anger. Like a juicy bit of gossip, it spread through the grapevine. The very people who had worked with the Forest Preserve District to pass referendums to acquire and preserve natural areas, who had volunteered for work days to restore and improve the preserves, and who had been its most vocal supporters, now felt angry and betrayed. The Elgin Area LWV Brunner Study examined the facts and the record to complete the first phase of the study, which concluded that gravel mining is inappropriate in Brunner Forest Preserve or any other forest preserve. Indeed, the extraction and sale of natural resources, whether gravel, coal, timber, natural gas or water, is inconsistent with the mission of the forest preserve. It also concluded that certain land use decisions by the Kane County Forest Preserve District raise questions of "mission drift" from the stated goal of preserving and restoring the nature of Kane County.

In order to purchase the Brunner Farm, The Kane County Forest Preserve District obtained a \$1.46 million grant from the Illinois Clean Energy Community Foundation and a \$750,000 grant from the Open Space Lands Acquisition and Development Program (OSLAD). The balance of the \$40 million purchase price came from the remaining 2007 referendum funds. In the grant applications, the District stated that the preservation of the Brunner Farm and associated fen was their top priority, and that there was a need to act quickly to save this 700+ acre parcel from development threats. There was widespread celebration when the District finally purchased the Brunner property in October of 2008. Everyone who had planned and labored so long to see the Brunner Farm preserved forever for the benefit of the environment and for public enjoyment exhaled and applauded the hard work and perseverance of the Forest Preserve District commissioners and staff. But, as the public found out more than a year later, there were other plans being discussed.

In the November 7, 2008 minutes of the KCFPD Executive Committee, only weeks after the purchase closed, "Executive Director Meyers commented that the committee toured the Brunner property, visiting the structures along with the layout of the property. Presently Staff is working with the Transportation Department and the Dundee Township Park District on the land transfers. Staff is also looking at mining the gravel on the property; they will present a report in the coming months." A December 2011 Freedom of Information (FOIA) request for that report,

along with any supporting documentation, received the following response from then Director of Finance Robert Quinlan: "Monica Meyers, Executive Director, assured me that no such report was ever commissioned or written. After that meeting, President Hoscheit directed her not to start such a report. Therefore, no such report was created, so none can be supplied to you." It would be odd for staff to have initiated a gravel mining report without being directed to do so. And it would be odder still for Hoscheit to have directed her to stop after the meeting, rather than during the meeting where it would be reflected in the minutes. Nevertheless, the official response of the KCFPD was to deny the existence of any study or report in contradiction to their own meeting minutes.

On April 1, 2009, the Forest Preserve Executive Committee approved an Intergovernmental Agreement with Kane County for the Longmeadow Parkway. It included a land swap for the road right of way, detention pond and 10-acre tract conveyed to the Dundee Township Park District as mitigation of property previously acquired by the County. Kane County agreed to pay the Forest Preserve District \$54,000 per acre for the 41.1 acres needed for the parkway. At the May 1, 2009 meeting of the Forest Preserve Executive Committee, Executive Director Monica Meyers presented a request from Dundee Township Park District for a license agreement on a portion of the Brunner Forest Preserve. They wanted to lease approximately 34 acres of property adjoining the 10-acre parcel they had already received. The 34 acres included the house and buildings to be used for recreational programs and 26 acres for athletic fields and parking. Some commissioners hesitated, saying that the District had just acquired the property and still needed to develop a master plan, that this might be moving too quickly. Others felt that this was a fine example of intergovernmental cooperation. The agreement was signed in July, giving the Dundee Township Park District the exclusive right to use the property for 50 years for monetary consideration of \$1.00. In short order, the KCFPD had sold or leased more than 84 of the 741 acres, and discussed mining for gravel, all before creating a master plan for this large and expensive preserve.

Not until January 2010, when the KCFPD Land Acquisition and Planning and Utilization Committees met at the McGraw Wildlife facility to tour the gravel excavation and lakes being developed at the quarry, did the first mention of a revenue producing plan emerge. President Hoscheit presented information from Lake County's Independence Grove Forest Preserve, which was created from a gravel quarry. Admission to the preserve is free, but parking, swimming, fishing licenses, canoe rentals, and cafe vending produce income. And, of course, significant revenue was derived from selling the gravel from the pre-existing quarry. Concerns were raised about the process of how and where to proceed with the concept of mining a preserve, as well as the ecological effects to the area. It was agreed that all steps in this possible multi-year project would need to be publicly recorded and attended.

Up to this point, the public was largely unaware that gravel mining was being discussed, or that opening a new gravel mining operation – as opposed to purchasing an existing gravel quarry -- was even legal in a forest preserve. The reaction was widespread and overwhelmingly

negative. In response to public criticism, President Hoscheit put out a "To Whom It May Concern" letter on February 9, 2010 in which he attempted to clear up the "misinformation" and "inaccuracies" being circulated. The KCFPD is "focused on improving our preserves by incorporating amenities that would benefit preserve users and wildlife. One such enhancement would be the creation of lakes and fishing habitats. Our focus is not on starting a gravel mining operation, but instead is to convert existing cornfields to lakes. The District is investigating options to create lake and water habitats on a few of its properties." The letter did not mention Brunner Forest Preserve at all, although it did point out previous reclamations of existing gravel mines at Big Rock and Grunwald Farms Forest Preserves in Kane County, and Independence Grove in Lake County as success stories. Nor did it explain why fishing lakes would be needed next to the Fox River.

As to their intentions, Hoscheit continued, "If we were to create such a lake, it would have to be in an area that is appropriate. It would not, for example, make sense in a heavily forested area nor in an area ecologically sensitive or pristine, where creation of a lake would dramatically, negatively impact the flora and fauna. Again, this would involve the conversion of cropland." "One significant benefit of extracting sand and gravel is that the process would generate millions of dollars in revenue which would be reinvested in acquiring additional land." "Currently, no site has been selected for such a project. The Forest Preserve Commission is merely evaluating this possible opportunity for future consideration." No mention was made of any staff report on mining for gravel in the Brunner Forest Preserve, or that preliminary soil studies done by Kane County for the Longmeadow Parkway had identified extensive gravel deposits on the site.

The attempt to make the whole Brunner/gravel mining issue go away was not successful. For one thing, Commissioner Phil Lewis had already been quoted in a 2-10-10 Daily Herald article as saying that since the Longmeadow Parkway was going to be built on an easement through the Brunner Preserve anyway, and "there's gravel on the Brunner property, then from a citizen's standpoint in Kane County, I'd be pretty hard-pressed to explain to my constituents why I spent several million more dollars hauling gravel to the site where there exists gravel, particularly when we can build such a nice recreational feature in the form of this lake. It's very prudent to investigate this. My motives are clear – to improve the forest preserve and utilize the assets that we have at our control." The public was not mollified, and the issue continued to be a contentious one.

As more information became available, the public outcry grew. The Kane County Forest Preserve Commissioners circled the wagons and tried to wait it out. But the story did not go away. It became a 2010 election issue for board members up for re-election. Within the Dundee-Carpentersville area, it became a litmus test for candidates: Do you support mining for gravel or "creating fishing lakes," as President John Hoscheit called it, in Brunner Forest Preserve? Whatever their opinions had been – if they even had an opinion – it was clear that

taking the pledge was the only way to get elected. And every candidate in the area did so; they would not support mining in Brunner.

By that time, it was no doubt clear to President Hoscheit that this particular issue was dead, at least for the immediate future. Support for it on the board had mostly evaporated in the harsh glare of publicity. Worse still, the anger and mistrust generated by the controversy put at risk the success of the \$30,000,000 Forest Preserve referendum on the April 2011 ballot. It was time for some fence mending. Hoscheit met first with a small group of people in the office of Dundee Township Supervisor Sue Harney, one of the most outspoken critics of the idea. Then he agreed to address the public meeting of the LWV Brunner/Gravel Mining Study group in March 2011. Asked to put on record his position, Hoscheit denied that gravel mining had ever been more than a fleeting idea, and conceded that there was no support for continuing. He then gave a strong presentation in favor of the referendum and why the timing was right in a down market to purchase additional property. Whatever mistrust lingered in the public mind, they voted to pass the referendum in 2011.

But a number of environmentalists had begun to discuss changes to Illinois law to prevent gravel mining in forest preserves. Geoff Petzel, Executive Director of Friends of the Fox River, drafted an amendment to the Downstate Forest Preserve Act that would prohibit the development of any new sand, gravel, or other mining operation on land owned by a forest preserve district, while exempting current or previous gravel mines. On May 26, 2011, State Senator Michael Noland (22nd District) introduced that amendment to the Illinois General Assembly as SB 2484. It was assigned to the Local Government Committee, but did not advance after some opposition.

The League of Women Voters of the Elgin Area approached the Study of Potential Gravel Mining in Brunner Forest Preserve by asking what were the economic, environmental, and social policy issues? The answer, based on research and common sense, was that mining for gravel on Forest Preserve land acquired for a record \$40,000,000 would be a very bad decision from every perspective. It did not make economic sense, given the risk posed to the public water supply, the uncertainty of the gravel market and timeline, the costs of the reclamation, and the loss of public use for decades. It did not make sense from an environmental point of view, given the negative impact on air and water quality, habitat destruction, and the difficulties of reclamation and restoration. It raised issues of public trust and transparency, with far-reaching implications. And the mere discussion of gravel mining cast a shadow on future funding by putting the credibility of the Kane County Forest Preserve in doubt.

The Brunner/Gravel Study revealed some interesting facts and figures. Even more interesting, however, were the facts and figures that were not revealed, or even available. The Forest Preserve District Commissioners, charged with acquiring and protecting natural lands in Kane County, apparently indulged in a collective flight of fancy concerning the possible millions of dollars to be made by mining for gravel in a conveniently located preserve. In light of their

claims that no studies were ever undertaken to determine the location and value of gravel on the property, or to weigh the environmental impact of such a gravel mine, then it is even more difficult to understand how an idea so contrary to the mission of the Forest Preserve could have been entertained even momentarily.

Based on the findings of this study, the Elgin Area League of Women Voters took the position that:

- Gravel mining is inappropriate in Brunner Forest Preserve or any other forest preserve.
- The extraction and sale of natural resources, whether gravel, coal, timber, natural gas, or water, is inconsistent with the mission of the forest preserves.
- The Downstate Forest Preserve Act should be amended to prohibit the extraction and sale of such natural resources.
- Certain land use decisions by the Kane County Forest Preserve raise questions of "mission drift" from the stated goal of preserving and restoring the nature of Kane County.
- Public access and transparency issues continue to be problematical at the Kane County Forest Preserve District.

The full text of the 2012 Study of Potential Gravel Mining in Brunner Forest Preserve (Kane County Forest Preserve District) can be found at <http://lwvelginarea.org/2012/05/01study-of-potential-gravel-mining-in-the-brunner-forest-preserve-kane-county/>.

2013 Update of the Kane County Forest Preserve District Study: Current Concerns

In the course of studying the original gravel mining controversy surrounding Brunner Forest Preserve, a number of other issues came up which led to the decision to broaden the scope of the ongoing study to include "mission drift", the inherent conflict of interest posed by the Kane County Board members/Forest Preserve Commissioners "wearing two hats", financial questions, and transparency issues. To reflect the expansion of the original study scope, the continuing study has been renamed the Kane County Forest Preserve District Study. This is an update on those issues, and on Brunner Forest Preserve.

Brunner Forest Preserve – Still Not Open

In October 2008, the KCFPD purchased the Brunner Farm for a record-breaking \$40 million, using referendum money and grants. At the time, Director of Natural Resources Drew Ulberg declared it "the single most important land purchase the district has ever made." More than four and a half years later, in May of 2013, the Brunner Forest Preserve is still not open. While some preliminary work has been completed, there is still a chain across the entrance. The OSLAD Project Agreement signed by President John Hoscheit on May 26, 2009 stipulated that the site should be open to the public within twelve months following the completion of site acquisition, and that recreational development, as proposed in the approved project application plans, should commence within three years following completion of acquisition.

In the fall of 2011, the District announced a number of open house meetings to solicit public input as part of the 2012-2017 Update of the Master Plan. A one-hour public information meeting was held on April 11, 2012 in Geneva to show the proposed plan for Brunner Forest Preserve. Despite the inconvenient time and location 20 miles away, a number of local people did attend. Others sent comments based on the proposed master plan map on the KCFPD website. Much to their surprise, the map on display at the meeting was different from the one on the website, and had been prepared for a new 2012 OSLAD grant application. It showed minimal restoration plans, construction of basic amenities, and a single trail beginning in 2013-2014 if funding was approved. The proposed habitat restoration timeline was shown as 40-50+ years.

That compares unfavorably to the work undertaken at the 800-acre Muirhead Springs Forest Preserve in Hampshire, which opened in October of 2011 after an intensive two-year renovation to restore some 600 acres to their native prairie state. The Muirhead Springs Forest Preserve, similar in size and former agricultural use to the Brunner Forest Preserve, now has restored prairie habitat, trails, and amenities. The KCFPD has offered a number of explanations for the continued delays in opening Brunner to the public, including the demolition of certain structures, required studies, remediation of contaminated soil, and a lack of funding for the

construction of necessary improvements. But there has been no explanation for the apparent low priority given to the restoration of this high profile acquisition. This has led some to speculate that the purchase of the Brunner property had as much to do with acquiring a roadway right of way and possible gravel resources for Kane County as it did with the preservation of nature, and that the delay in opening reflects that.

On May 11, 2013, Governor Quinn announced that the KCFPD had been awarded a \$400,000 grant through the state's Open Space Lands Acquisition and Development program (OSLAD) for the initial development of 384 acres of the 741-acre Brunner Forest Preserve. Project amenities include 3.5 miles of regional, multi-use trail, mowed trails, a fishing station and jetty, and an interpretive overlook. The trails will connect to Lincolnwood Park, the Carpentersville Dam, the river, and the proposed Dundee Township Park District Sports Complex. A trail head at the north end of the property will have a parking lot, restroom, and shelter. Natural area enhancements include 60 acres of prairie restoration, 10 acres of wetland/fen restoration, and 600 feet of shoreline enhancements. While this is welcome news, no timeline has been given yet for the development, and no announcement of when the public might be able to finally visit Brunner Forest Preserve.

Proposed Amendment to the Downstate Forest Preserve District Act

After the election of the new 98th General Assembly restarted the legislative cycle, the proposed amendment to the Downstate Forest Preserve Act to ban the development of any new sand, gravel, or other mining operation on land owned by a forest preserve was reintroduced on February 5, 2013 by Senator Michael Noland as SB 1344. It was again assigned to the Local Government Committee, where no action was taken before it was re-referred to Assignments on May 10th. The Elgin Area League of Women Voters supports this bill, but has taken the position that it should be expanded to include other natural resources, as well. The Downstate Forest Preserve District Act should be amended to ban the extraction and sale of natural resources, including gravel, coal, timber, oil, natural gas, and water, from forest preserves. Such an amendment would preserve the intent of the original legislation while serving to mitigate the inherent conflict of interest posed by the dual nature of the county board member/forest preserve district commissioner. Elected representatives cannot reasonably be expected to adequately and simultaneously promote economic development for the county while also protecting and preserving natural lands from development.

The passage of legislation to regulate horizontal hydraulic fracturing (fracking) in Illinois in May, 2013 opens the door to a potential oil and natural gas boom that could bring jobs, investment, and tax revenue to parts of southern Illinois that really need them. But the rush to cash in on previously unreachable resources has many fearing for the consequences to the environment. The experience of other states shows that the aftermath of a fracking boom is often

contaminated soils, contaminated surface waters, contaminated groundwater, and expensive remediation projects. Five southern Illinois counties lobbied unsuccessfully for a moratorium on fracking until the risks to public health, the health of the environment, and the general welfare are better understood. They were especially concerned with the potential for damage to the Shawnee National Forest and their local economies. Thousands of landowners have already sold the lucrative drilling rights for oil and natural gas, with more expected to in the near future. It is not unreasonable to think that counties and/or forest preserve districts might be tempted by potential revenue from the sale of drilling rights. Consideration should be given to protecting forest preserves, state and national parks, and other significant natural areas from the effects of fracking and other resource extraction techniques. Designating natural lands as a forest preserve or a national park no longer seems adequate.

"Mission Drift" at the Kane County Forest Preserve District

Forest Preserves were initiated by a 1913 statute authorizing the establishment of taxing districts, *"To acquire ... and hold lands ... containing one or more natural forests or lands connecting such forests or parts thereof, for the purpose of protecting and preserving the flora, fauna and scenic beauties within such district, and to restore, restock, protect, and preserve the natural forests and said lands together with their flora and fauna, as nearly as may be, in their natural state and condition, for the purpose of the education, pleasure, and recreation of the public."* This visionary statement was largely the work of two great Chicagoans, the architect Dwight Perkins and the landscape architect Jens Jensen. It recognized the innate importance of natural landscapes as well as their benefit to people living in an increasingly developed metropolitan area. While the language of the original act has been amended over the years to expand and clarify the powers of the forest preserve districts, the intent of the act was clear.

The Kane County Forest Preserve District was organized in 1925 by public referendum. Its mission statement is, *"To acquire, hold and maintain lands within Kane County that contribute to the preservation of natural and historic resources, habitats, flora, and fauna; and to restore, restock, protect and preserve such lands for the education, recreation, and pleasure of all its citizens."* The Goal is *"To preserve and restore the nature of Kane County."* During the course of the Brunner/Gravel Mining Study, it became clear that there had been some "mission drift" in recent years. How else can one reconcile the stated mission and goals with the willingness to entertain, even briefly, the idea of developing a gravel mine in a forest preserve?

Aside from the gravel mining issue, there have been other instances of the use of Forest Preserve land and money for purposes only marginally related to the mission statement. A 1996 amendment to the Downstate Forest Preserve Act gave forest preserve districts the power *"to construct, equip, acquire, extend, improve, restore, maintain, and operate recreational and*

cultural facilities, including but not limited to natatoriums, swimming pools, ice skating rinks, tennis courts, golf courses, toboggan slides, ski areas, museums, historic buildings, botanical gardens, cultural and environmental education centers, or any combination thereof, and all necessary related facilities, such as but not limited to gift shops, cafeterias, snack bars, restaurants, or any combination thereof." Like other Districts, the Kane County Forest Preserve District began to blur the distinction between a forest preserve and a park district. The KCFPD operates the Durant House Museum and the Pioneer Sholes School at the LeRoy Oakes Forest Preserve, and the Fabyan Villa Museum, Fabyan Windmill, and Japanese Tea Garden at the Fabyan Forest Preserve. These facilities existed before the estates were purchased by the District, and complement the mission to preserve natural and historic resources.

Other facilities owned by the District have a less direct bearing on the goal to preserve and restore the nature of Kane County. Golf courses, for example, provide open space, recreation, and limited wildlife habitat. They do not preserve and restore natural lands. There is nothing natural about mowed greens, and the gas and chemicals needed to maintain them. Deer Valley Golf Course is adjacent to Big Rock Forest Preserve, and Hughes Creek Golf Course is adjacent to Johnson's Mound Forest Preserve, so they do serve as a green space buffer. Settler's Hill Golf Course, however, is the site of a county landfill. It offers very little in the way of natural habitat, flora and fauna.

Even further from the goal of preserving and restoring the nature of Kane County is the Philip B. Elfstrom Events Center, which includes the Fifth Third Bank Ballpark, the Fox Valley Strikers Soccer facility, and the Fox Valley Ice Arena. There is no nature here to preserve. The Forest Preserve District acquired some needed office space above the FV Ice Arena, but it seems to be a very large expenditure for office space. Whether or not these facilities are self-supporting, they represent a move away from the mission statement of the Forest Preserve District.

There has been an erosion of the mission to preserve and restore natural lands within the traditional forest preserves, as well. While there may be justification for minimally invasive uses, such as utility easements, or agricultural use as cropland until such time as restoration can be begun, in many cases there has been a blurring of the distinction between forest preserves and park districts or municipal parks. Forest Preserve District President John Hoscheit, a former St. Charles park board member, was quoted in a 5-30-03 Chicago Tribune article about Big Rock Forest Preserve as saying that "providing more recreational opportunities is necessary to better demonstrate to taxpayers the benefits of investing in the land." At that time, only about 5% of forest preserve land was available for recreation, with the rest being open space. He said that the (forest preserve's) goal should be to double recreational acreage to 10%, which he called "the industry standard." "We have very aggressive park districts in the eastern part of the county, so the pressure is not as great (to boost recreational uses). With development of Kane's western townships that don't have park districts, however, the pressure to make our open space accessible and usable will increase." Under his tenure, forest preserves have become more like park

districts. But this trend marks a turning away from the mission to preserve natural lands in their natural state.

Leases and Intergovernmental Agreements

Intergovernmental agreements and licensing agreements between the KCFPD and other legal entities and organizations have sanctioned the use of "preserved" land for the construction of maintenance and storage facilities, athletic fields, Frisbee golf courses, a model railroad club, community gardens, and a radio-controlled model airplane field, among others. A 2011 Freedom of Information request for all long-term intergovernmental agreements, license agreements, or leases for use of KCFPD land revealed a surprisingly generous relationship between the District and the municipalities, townships and park districts within the county. While the records obtained were incomplete, examples include:

- A 50 year IGA with the Fox Valley Park District for use of the Barnes Road property in Sugar Grove Township for construction and use of a maintenance facility, pasture, fruit orchard, tree nursery, and walking trail/bike path; no rental fee (4-1-99);
- A 50 year IGA with the St. Charles Park District for the construction and use of the East Side Sports Complex (athletic fields, picnic grove, trail, restrooms, parking); no rental fee (11-12-02);
- A 5-year license agreement with 5-year renewals with the Village of South Elgin to use an area within the Jon Duerr Forest Preserve for construction and maintenance of athletic fields, a Frisbee golf course, and related uses; no rental fee (6-13-06);
- A 30 year license agreement with the City of Elgin for exclusive use of the 56-acre Burnidge Property and Eagles Club property for a public park to include athletic fields, a picnic shelter, trails, and natural areas; no rental fee (3-13-07);
- A 99 year license agreement with the City of Elgin for the exclusive and irrevocable right to use approximately 93 acres north of Plank Road for a public park as part of a regional park facility; no rental fee (3-13-07);
- A 15 year license agreement with Dundee Township for the use of a barn located within the Schweitzer Forest Preserve for equipment storage and operation of a maintenance shop and office; rental fee of \$1.00 plus costs of improvements and repairs (5-20-07);
- A 99 year IGA with the Fox Valley Park District where the Forest Preserve District agreed to purchase 5+ acres of a total 17+ acre purchase by the FVPD north of New Haven St. in Aurora for \$500,000, and then license the FVPD to use the parcel for recreational development and programming as part of a regional park system; no rental fee (1-8-08);
- A 50 year IGA with the St. Charles Park District for use of the former Illinois Youth Home property to be redeveloped as the River Bend Community Park, with construction

of athletic fields, skate park, basketball courts, maintenance facility, picnic grove, trail, restrooms, and parking lots; no rental fee (7-8-08);

- A 50 year license agreement with the Dundee Township Park District for the exclusive use of buildings located in the Brunner Forest Preserve along with additional acreage for programs, office space, and storage; rental fee of \$1.00 (7-20-09);
- A 50+ year IGA with the Batavia Park District for use of 14 acres located in the Dick Young Forest Preserve for the West Main Community Park, including construction of trails and other amenities; no rental fee (3-10-09);
- A 5 year license agreement with the Fox Valley Park District for the development of a community garden within the Oakhurst Forest Preserve; rental fee of \$1.00 (5-11-10);
- A 5 year IGA with the Geneva Park District to operate and maintain soccer fields within the Fabyan Forest Preserve with exclusive use during scheduled activities; \$1.00 rental fee and shared costs of parking lot and entry drive (6-21-10);
- A 20 year license agreement (with two additional 20-year renewals) with the Dundee Township Park District for exclusive continuing use of the Lincoln Wood Park within the Fox River Shores Forest Preserve; \$1.00 rental fee (2-8-11);
- A 5 year license agreement with the St. Charles Park District for the use and maintenance of the 8.7 acre soccer fields within the LeRoy Oakes Forest Preserve; rental fee of \$1.00 (5-10-11);
- A 5 year renewable license agreement with the City of Geneva and the Geneva Park District for the development and maintenance of a community garden within the Geneva Prairie Green Forest Preserve; rental fee of \$1.00 (8-9-11);

The precedent set by these agreements seems likely to continue. In the April 28, 2011 minutes of the Land Acquisition/Enterprise Committee, Blackberry Township Supervisor Dave Richmond asked to partner with the District to create baseball and soccer fields on forest preserve land. Blackberry Township residents have not voted to create and support a Park District, but wish to have athletic fields available to them for sports activities. Richmond stated that the Township does not have money for ball fields. President Hoscheit replied that the District has partnered with numerous park districts in the past and is willing to consider working with townships as well.

According to a 2-28-12 Daily Herald article about Dave Richmond, Blackberry Township has no debt, money in the bank, and has lowered its tax levy three years in a row. By seeking to use forest preserve land for athletic fields instead of paying for their own parks, Blackberry Township is in effect getting a subsidy from other Kane County residents. For example, the 2010 Census lists the median household income of Carpentersville residents as \$55,324. They are taxed both for the Kane County Forest Preserve District and for the Dundee Township Park District in which they reside. By contrast, the median household income for Elburn residents in Blackberry Township is \$92,897, and they are taxed by the KCFPD but not for a park district. Allowing the use of Forest Preserve land for the development of parks and athletic fields is a

policy which should be reconsidered. It does not support the Forest Preserve's mission, and it places an unfair tax burden on those communities that pay for their own parks and also subsidize park land for those communities that do not.

In addition to the license agreements with other governmental entities, there were agreements for use of forest preserve land by non-governmental organizations.

- A 50 year exclusive use license agreement with the Fox River Trolley Museum, Inc. for construction and operation of a trolley line through the Blackhawk Forest Preserve in South Elgin; rental fee of \$1.00 (12-14-99);
- A 5 year renewal license agreement with the not-for-profit Fox Valley Wildlife Center to use and maintain a 1-acre parcel with a house and garage within the Elburn Forest Preserve for the rehabilitation of injured and orphaned wildlife; rental fee of \$1.00 (8-8-06);
- A 5 year renewal of a license agreement with the not-for-profit Valley Model Railroaders for the use of a building and parking area on .86 acre on Kenyon Road; VMR to reimburse the KCFP \$5,300 for the 2005 roof repair (1-8-08);
- A 5 year license agreement with the not-for-profit Citizens Advocate Team, Friends of the Fox River, and Community Unit School District 300 for the use and maintenance of the house in the Schweitzer Woods Forest Preserve for office space, educational programs, and storage; rental fee of \$1.00 (10-13-09);
- A 20 year license renewal agreement (with two additional 20-year renewals) with the not-for-profit Wasco American Legion Baseball League for the exclusive right to use and maintain the 8.5 acre Wasco Baseball Fields within the Campton Forest Preserve; rental fee of \$1.00 (4-12-11);
- A 5 year renewal license agreement with the Aurora Barnstormers RC Club of Elburn to use and maintain a 4-acre mowed field, 700' gravel drive, and fence with entry gate within the Aurora West Forest Preserve as a radio-controlled airplane flying field; no rental fee (10-11-11);
- A 2 year agreement with the Chicago Area Mountain Bikers, Inc. (CAMBR) to develop and maintain a multi-use recreational access /mountain bike trail in Raceway Woods Forest Preserve; CAMBR to coordinate and fund development costs up to \$10,000, and annual maintenance up to \$5,000 (7-10-12); A similar plan is under discussion for the Fabyan Woods FP/Settler's Hill complex.

While all of the above may be beneficial activities that provide recreational opportunities to the surrounding communities, they do not – with the exception of the wildlife rehabilitation facility in Elburn and the Schweitzer educational organizations – have anything to do with the core mission of the Forest Preserve District, which is preservation and restoration of natural area flora and fauna.

Forest Preserve Land Use

After seeing the list of forest preserves developed as athletic fields, gardens, and parks, a second FOIA request was submitted in January 2013 requesting the total acreage of land owned by the KCFPD broken down into:

1. Preserved natural areas;
2. Developed recreational areas (athletic fields, ice arena, golf courses, etc.);
3. Historic or cultural areas (Durant House, Fabyan Villa site, Japanese garden, museums, etc.);
4. Utilitarian uses (roadways, maintenance yards, storage, nursery, parking, etc.)

The document supplied in response, an October 2012 Agency Overview, included the following:

- a. Total number of sites: 92 preserves; Total Acreage: 19,932
- b. Number of conservation easements: 5 /Easement acreage: 595
- c. Total acreage specifically for active recreation purposes: 2,500
- d. Number/acres of natural areas included in a.: 7,400
- e. Managed natural areas – ecosystem types
 - i. Prairie acreage 5,300 Grassland
 - ii. Forest acreage 2,600 Woodland
 - iii. Wetland acreage 2,500
 - iv. Other ecosystem acreage
- f. Restored areas acreage 10,400
- g. Open space (minimal management) acreage 2,300
- h. Storm water management acreage
- i. Number of rivers/creeks 31
- j. Estimated total miles of rivers/creeks 37
- k. Number of lakes/ponds 336
- l. Estimated total acreage of lakes/ponds 337

The numbers did not add up to the total, so a request for clarification of categories resulted in:

Total acreage: 19,931.55 acres
Preserved natural areas (targeted for restoration): 13,537.55 acres
Recreational areas: 494 acres
Cropland: 4,635 acres
Historic areas: 60 acres
Non-native natural areas (multi-purpose open space): 1,205 acres

While the categories provided did not correspond exactly to the categories requested, it would seem that roughly 68% of the total acreage is actually preserved natural areas, 23% is cropland (that could potentially be replanted and/or restored to a more natural area), and another 9% is developed recreational or historic areas and multi-purpose open space, which includes utilitarian, non-natural areas. There is no way to check the accuracy of those figures, or the apparent discrepancy between the 2,500 acres (12.5%) listed in the first section as specifically for active recreation, versus the 494 acres listed in the clarification as recreational areas. What is clear is that roughly one-third of the land acquired by the Forest Preserve District does not meet the definition of natural lands.

Since 1925, the Kane County Forest Preserve District's mission has been ***"To acquire, hold and maintain lands within Kane County that contribute to the preservation of natural and historic resources, habitats, flora, and fauna; and to restore, restock, protect and preserve such lands for the education, recreation, and pleasure of all its citizens."*** That bears repeating, because too many outside interests increasingly see forest preserves as land banks from which they can take, or borrow, acres. And the Forest Preserve Commissioners have been complicit in allowing them do so. Any agreement which constitutes a taking of forest preserve land for uses contrary to the mission to preserve, protect, and restore natural lands is inappropriate. A vote to turn over forest preserve land to another organization for development for any use, even recreational fields, is a step in the wrong direction, away from the core mission.

The DuPage County Forest Preserve District has repeatedly fended off attempts by St. Francis Catholic High School officials to acquire land for a parking lot. The private school in Wheaton wants to get state law changed to make it possible to get a couple of acres in neighboring Belleau Woods Forest Preserve in exchange for land elsewhere in the county. They have enlisted the aid of State Representative Jeanne Ives of Wheaton to advance their cause. In a 5-8-13 Daily Herald article, she was quoted as saying, "I am 100% behind St. Francis acquiring – in a fair and equitable way – land for its parking needs." This intended encroachment/land swap fails to recognize the importance of preserving undisturbed natural areas for many reasons, including natural flood control. Nor does it acknowledge that a "couple of acres" elsewhere in the county would not have the same value as the land in Belleau Woods. Preserved land, by definition, is not available for development. The DuPage County Forest Preserve District should be commended for refusing to accommodate this land grab. The Kane County Forest Preserve District should be equally unwilling to serve as a land bank for other organizations.

The Chicago Tribune published an editorial about the Cook County Forest Preserve District on May 24, 2011 entitled "Protect the Preserves" which clearly stated the problem. "The district's role is to acquire, preserve, and protect natural land, not to approve use of them for other worthy causes." As Laurence Msall, head of the Chicago Civic Federation said, "The people who sacrificed, who fought to preserve this forest land, knew there would be hundreds of

good ideas for other uses, but when they wrote the charter, they said no." Development and tight budgets have made it difficult for park districts and municipalities to acquire land for athletic fields, community gardens, and other worthy uses, but the forest preserves are about protecting natural land for generations to come. The Kane County Forest Preserve District should reconsider policies that allow for the diversion of preserved land to any other use by any other entity, however admirable, and stick to its own mission.

River Edge Park in Aurora

In addition to allowing other organizations to take over use of forest preserve land, the Kane County Forest Preserve District has been generous with taxpayer supplied funds. In January 2013, a Finance Committee agenda item from Executive Director Monica Meyers and Finance Director Ken Stanish caught our attention. It requested approval of a \$2,000,000 transfer from the Land Acquisition Fund to the Construction and Development Fund for the City of Aurora's River Edge Park Pedestrian Bridge Construction Project. The memorandum explained that the District had entered into an agreement with the City of Aurora in 2010 to assist with construction of the bridge with a \$2 million contribution, and that the funds would be needed shortly to reimburse Aurora for engineering and construction costs. "The funds have already been set aside in the Land Acquisition fund for the project and will be moved to the Construction and Development Fund. There will be no impact on the available balance in either fund." Curious. By what accounting magic could the movement of \$2 million have no effect on the balance sheet? And why were significant Forest Preserve District funds being spent on a city park?

The February 9, 2010 minutes of the Full Forest Preserve Commission meeting record the unanimous approval of the \$2 million IGA with Aurora with no discussion and no dissent. Prior to the Full Commission meeting, the Executive Committee met on February 5, 2010. There, too, the agreement passed with no discussion and no dissent noted. Why would the expenditure of \$2,000,000 for a city park not merit a substantial discussion, and why did no one vote against it? The answer was not in the record, so we did some research on River Edge Park.

River Edge Park is the centerpiece of a 10-year master plan for Aurora. It is "not simply a park, it is a critical part of a larger plan, created first and foremost to spur economic development, create jobs and strengthen our community tax base," according to Mayor Tom Weisner, as quoted on foxvalleylabornews.com (10-13-10). It will also clean up polluted land and create open space, while providing an entertainment venue, a play area, concessions, fountains, walking paths, a bridge, and natural areas. River Edge Park will be a regional entertainment venue that will foster economic development in the downtown area.

Situated on land owned by the City of Aurora and the Fox Valley Park District, River Edge Park is a joint public/private venture, with the main public funding source being a Tax

Increment Financing District (TIF) and the main private funding source being grants and donations from individuals and corporations. To build the park, the City of Aurora secured \$15 million in grant money, including \$8 million from the Illinois Department of Commerce and Economic Opportunity, \$3 million from the Fox Valley Park District, \$2 million from the Kane County Forest Preserve District, and \$2 million from the Dunham Fund.

In a 2-11-13 letter to Executive Director Monica Meyers, we asked for an explanation of why Forest Preserve funds were being used to build a bridge in a city park. In her reply, Ms. Meyers said that the \$2 million was part of the 2007 referenda funds, and that approximately 15% of every referendum is spent on capital initiatives, with 85% spent on land acquisition. "Additionally, the ballot language for the 2007 referenda identified a variety of expenditures; *'Shall the Forest Preserve District of Kane County, Illinois borrow money and issue general obligation bonds in an amount not to exceed \$85,000,000 to acquire and preserve forests and natural lands, protect wildlife habitats, enhance flood control, improve hiking and biking trails and other recreational areas, provide forest and wildlife education programs and improve forest preserves, wetland and prairies, all in accordance with the purposes authorized by the Downstate Forest Preserve Act of the State of Illinois as amended?'*" She confirmed that the bridge was on city property, not Forest Preserve property, but pointed out that the bridge would provide access to the Fox River Trail. While the bridge may "improve hiking and biking trails" as stipulated in the referendum request, taxpayers who voted for the Forest Preserve referendum would generally understand that to mean the money was to be spent to acquire Forest Preserve land and to make improvements on Forest Preserve land.

A follow up letter asking where the \$2 million for the City of Aurora's River Edge Park could be found in the 2012-2013 budget elicited the response that it is part of the \$9,610,150.00 in the 7080 Land Acquisition Fund account. There is no separate line item, or description of that \$2 million for the bridge in the budget. Nor was there an adequate response to a FOIA request for "any legal citation, case law, or legal opinion that authorizes or supports the diversion of 2007 referendum funds approved by taxpayers for the acquisition and improvement of Forest Preserve land for use by another governmental entity on land not owned by the Forest Preserve, specifically the City of Aurora's River Edge Park." They simply cited the Intergovernmental Cooperation Act that says public agencies may exercise their powers jointly to perform their functions or provide services except where specifically prohibited by law. Given that slim justification, it appears that they believe the Forest Preserve District can spend or give away referendum funds at their discretion as long as there is no specific law against it. We disagree.

The Forest Preserve District has participated in the design and construction of a number of projects with cities and villages in Kane County, including funding. In most cases, however, the source of the funds was the Fox River Trust Fund, not Forest Preserve Funds. The Fox River Trust Fund was established as part of a deal between the Forest Preserve District, the City of Elgin, and the Grand Victoria Casino. The riverboat casino contributed some \$6 million to the fund beginning in 1994. The Kane County Forest Preserve District administers the fund,

providing grants for river bank stabilization, river enhancement, and other community projects centered on the Fox River. A total of \$5,921,039.49 has been spent to date. The March 31, 2013 Fox River Trust Fund Report listed a remaining balance of \$659,733.24 on the original \$6,000,000 principal amount and \$580,772.73 in interest. Of that balance, \$185,000 is committed to Fabyan Shoreline improvements, leaving \$474,850 still available.

It seems unusual, then, for the FPDKC to agree in 2010 to "donate" \$2 million for construction of a bridge in an Aurora city park using Forest Preserve funds rather than Fox River Trust Funds. Shortly thereafter, in January 2011, the District passed Resolution No. FP-R-01-11-2042 stating that there were not sufficient funds to continue the land acquisition and improvement program, and that it was necessary and in the best interests of the District to borrow an additional \$30,000,000 (the 2011 referendum). The referendum passed. One can only speculate as to whether the outcome would have been the same if the voters knew that the District had just given away \$2 million from the last referendum.

At the same February 13, 2013 Forest Preserve meeting where the transfer of funds from the Land Acquisition Fund to the Construction and Development Fund paved the way for the \$2 million payment to Aurora for their pedestrian bridge, Commissioners voted to demolish the concrete portion of the 100+ year- old Fabyan Forest Preserve bridge across the Fox River that was closed last year after a large crack developed. Representatives of the Friends of the Fabyan Preserve group, which had complained about a lack of maintenance on the bridge and adjacent causeway, said they were willing to drop their opposition to demolition of the bridge if there were plans for a suitable replacement bridge. President Hoscheit indicated that there was no money to replace the bridge in the near future. In a 2-15-13 Daily Herald article, he was quoted as saying, "We're talking in the millions of dollars in terms of cost to do that. At this point, we don't have the resources for it." Perhaps they would have had the resources if they had not given the money to Aurora for a bridge in a city park. The new budget approved by the District in May now includes \$495,000 for repair and replacement of the Fabyan bridge, as reported by James Fuller in a 5-18-13 Daily Herald article.

So \$2,000,000 of referendum money approved by the taxpayers of Kane County for the acquisition and improvement of Forest Preserve land has been diverted for the construction of a bridge in Aurora's River Edge Park. And this was accomplished with a minimum of discussion and publicity, and with minimal documentation in either the minutes or the budget. While River Edge Park may be a laudable economic development project that will provide river front amenities to the residents of Aurora, it requires a considerable stretch of the imagination to make it fit the mission of the Forest Preserve District, which is to preserve the natural lands of Kane County.

In an interesting sidebar, the Aurora Beacon News reported on April 17, 2013 that the City of Aurora now wants to amend an agreement with the Fox Valley Park District that would close the Fox River Trail up to five times per year during peak concert events to provide

additional capacity in the River Edge Park. Bicycle riders and pedestrians would be detoured to the west river path.

A Look at Other Forest Preserve Districts

Concerns about the direction of the Kane County Forest Preserve District led to a quick comparison with other local districts. DuPage County Forest Preserve District has over 25,000 acres, including some 60 preserves and three golf courses, but no large recreational venues. Will County FPD, which has over 20,000 acres, has preserves and education centers, but no golf courses, stadiums, or ice rinks. The McHenry County Conservation District has more than 25,000 acres but no golf courses or strictly recreational facilities. Cook County FPD, the largest and oldest district, has more than 68,000 acres that include dedicated preserves, lakes, aquatic centers, golf courses, boat ramps, and model airplane fields.

But as they celebrate their 100th anniversary, Cook County FPD is implementing a new master plan that focuses on nature-based recreation that has a minimal impact on the natural environment. "Don't expect baseball fields or ATV trails in the Forest Preserve District of Cook County's new recreation master plan. Instead, the first recreation blueprint since 1929 will spend up to \$8.6 million to encourage visitors to commune with nature and lose weight through activities such as sledding, canoeing, camping, and archery," reported Marni Pyke in a 3-19-13 Daily Herald article. Concerns about childhood obesity have factored in to an emphasis on walking and other compatible recreation that facilitates the enjoyment of nature. "Supporters said that it's about time the district – criticized in the past for being more about politics than preservation – analyzed its priorities. "The difference now is that (District Board President) Toni Preckwinkle hired the right people and told them to fix it," according to Benjamin Cox, director of the Friends of the Forest Preserves. Karen Selman, vice president of the Friends of Spring Creek, approved of the new plan too, saying "We certainly don't want them turned into park districts. We want them to maintain their naturalness and wildness."

The Kane County FPD is also in the process of updating its master plan, but has taken a different direction in recent years. The 2008-2012 Master Plan listed a number of district goals in addition to expanding and improving the forest preserves, including:

- Provide year-round opportunities for recreation experience that relate to the leisure needs of the county residents;
- Offer more diversified programs and services that provide for all ages and interest groups and enhance the quality of life for the county residents;
- Provide high-quality facilities that meet the needs of all segments of the county;
- Enhance the existing natural resource programs and services that meet all community group needs;

- Create effective and efficient methods of acquiring, developing, operating and maintaining facilities and programs that accurately distribute costs and benefits to public and private interests.

These may be worthwhile goals, but taken with the leases and IGA's listed earlier, there is room for concern that the KCFPD is blurring the distinction between a forest preserve district and a park district. Programs, services, and facilities should be secondary to preservation. In updating the master plan, the District should reanalyze its priorities and practices to more closely align with the mission statement. Rather than attempting to provide recreational programs, experiences, and facilities to meet the leisure needs of all ages and interest groups, it should focus on the core mission to preserve the nature of Kane County for the education, recreation, and pleasure of its citizens.

A Conflict of Interest: "Wearing two hats"

In Kane County, the elected County Board members also serve as the Forest Preserve District Commissioners. While this is a common practice of long standing, there is an inherent conflict of interest in "wearing two hats" when the interests of the County overlap and sometimes conflict with the interests of the Forest Preserve. These two separate and distinct legal entities, supported by different taxes, have different missions. For example, it is the County's job to promote economic development and to build roads and bridges, while the Forest Preserve District seeks to preserve natural areas, i.e., keep natural areas from being lost to development. While it is not impossible to serve the interests of two boards, it can be difficult at times to make decisions without putting the interests of one over the other. And the financial structure where county board members receive a salary while receiving only \$30 per meeting as forest preserve commissioners dictates the relative importance of each.

Brunner Forest Preserve

The Brunner Forest Preserve is a good example. Its acquisition was a high priority of the Forest Preserve District, based on size, natural areas, and river frontage. But equally important, the County needed to acquire the road right of way for the Longmeadow Parkway and bridge. The County had begun acquiring critical road right-of-way parcels in 2004, and in 2005 succeeded in getting \$4 million in Federal funds from SAFETEA-LU earmarked for right-of-way acquisition and engineering for the Longmeadow Parkway. The project's estimated cost of \$88 million at the time (now more than twice that amount) far exceeded typical Federal and State earmarks for local projects, according to a Kane County Department of Transportation presentation to the Kane County Board on July 25, 2007. When the \$4 million was spent, all

available funding would be exhausted, and there was no guarantee that further funding would be available due to limited resources and extreme competition for those funds.

Adding pressure to the need to act quickly were the ongoing budget battles in Springfield. Inaction on a capital bill which would help fund Illinois Department of Transportation projects put some major Kane County highway funding in danger. If the State failed to approve matching funds for the \$300 million in federal money already set aside for Fox Valley projects, a number of them might be eliminated, including the Longmeadow Parkway bridge corridor. Kane County Board member Bill Wyatt, chairman of the Legislative Committee, went to Chicago to testify in favor of the State Legislature developing a capital bill, but found the budget discussions bogged down on the issue of gaming and the prospect of more casinos to raise money for capital projects. An Elgin Courier-News article (10-25-07) quoted him as saying "We have not gotten permission to access federal funds, and every year we wait, the money becomes 10 to 15 percent less effective." Members of the Legislative Committee worried that if IDOT failed to come up with matching state funds, the federal money would be lost. There was a deadline looming, as the earmarked funds had to be spent by August 2008 or go back into the federal budget. And once the matching funds were secured, Kane County would still have to figure out how to deal with the remaining unfunded items, including Phase II Engineering, the additional further right-of-way acquisition, and construction costs.

So it was fortuitous that at the same time the County was exploring funding options for the Longmeadow Parkway, the Forest Preserve District was again looking at the Brunner farm. This property had long been on the "wish list" of potential acquisitions, but had never been available at an affordable price. Negotiating the purchase of this property would benefit both the County and the Forest Preserve, with the Forest Preserve picking up much of the tab. The \$40 million price tag was a huge obstacle, even with some \$2.2 million in grant funding. The Forest Preserve District ultimately bought the property and then sold the roadway right-of-way through the middle of the preserve to the County for \$54,000/acre, considerably less than they would have had to pay if they had been forced to secure the entire parcel on their own. So which "hat" were the County Board members/Forest Preserve Commissioners wearing when they signed the deal to purchase the Brunner property for the Forest Preserve District? Were they acting solely in the interests of the Forest Preserve District or did the needs of the County factor into the decision to spend a record \$40 million?

It is difficult to entirely separate the interests of the Forest Preserve District from those of the County here, but the outcome might have been different if the two boards had been totally separate and only serving the interests of one organization. Certainly it would be preferable not to have a road bisecting a forest preserve. And one can only speculate as to whether the high price paid for the Brunner property invited the consideration of recouping some of that money through mining the gravel on site, to sell or use in construction of the parkway. But if the Forest Preserve Commissioners had been elected solely to oversee the preservation of natural lands, and were not also responsible for County development, mining a preserve for gravel would likely never have been considered.

Fabyan Woods/Settler's Hill Development Plan

Another example of the potential conflict of interest posed by commissioners serving on both boards is the Fabyan Woods/Settler's Hill development plan. The 700+ acre Fabyan Parkway campus includes the former Settler's Hill landfills, Settler's Hill Golf Course, the former Kane County Jail site, Cougars Stadium, Striker's Soccer facility, the Fox Valley Ice Arena, and the eastern part of Fabyan Woods Forest Preserve. Kane County owns the jail site and one of the landfills; the Kane County Forest Preserve District owns the other land fill, the Ice Arena, the Stadium, Striker's Soccer facility, and Fabyan Forest Preserve. The Fabyan Property Utilization Study Subcommittee formed to create the concept plan for the redevelopment of the campus included several County Board (and Forest Preserve) members and the mayors of Geneva and Batavia. The Lannert Group was hired to develop a plan for a recreational complex that would enhance recreational uses while offering economic development opportunities. Preservation and restoration opportunities were not high on the list.

Predictably, the concept plan ran into problems when it became known that the proposal included constructing a music venue, parking lots, and mountain bike trails within the historic oak woodlands of the Fabyan Forest Preserve. There were also environmental concerns about building on the landfill site and whether the old jail site should be developed as a hotel and convention site, along with an expanded golf course, or sold to pay off some of the construction costs of the new jail. But the focus on recreational and economic development was clearly at odds with the Forest Preserve mission to protect and preserve the forest.

After considerable public opposition, most of the offending uses were removed from the Fabyan Forest Preserve woods, including the music venue, parking lot, and one of two mountain biking trails. But the plan still has at least two multiuse trails through the woods, which is a concern to preservationists because of the degradation of the woodland by existing illegal mountain-biking trails. According to Forest Preserve President Hoscheit, "there is a benefit to putting a trail in an otherwise wooded area because it keeps people from making their own trail." On that assumption, the Forest Preserve is already working with the Chicago Area Mountain Bikers group to design and build a natural surface biking trail within Raceway Woods FP in Carpentersville. A similar arrangement may be considered for Fabyan Woods. The revised concept plan for the Fabyan Parkway campus was approved by both the Kane County Board and the Kane County Forest Preserve District as a general guideline, even though many details remain unresolved. But the original recreational development plan most likely would never have been considered in the first place by an independent forest preserve commission such as the one in DuPage County.

DuPage County Forest Preserve District Split

The DuPage County Forest Preserve District shared an elected board with DuPage County for many years until the two government entities split in 2002. The change came after legislation approved by the Illinois General Assembly in 1996 mandated that forest preserve district commissioners in counties having a population greater than 800,000 but less than 3,000,000 be elected separately from county board members. DuPage County cut the county board's size from 25 (24 plus a chairman) to 18, and created the seven-member forest preserve commission (6 commissioners plus a president). The split ensured that both the DuPage County Board members and the DuPage County Forest Preserve Commissioners would be elected and compensated on a separate but equal basis, without an increase to the taxpayers.

DuPage County Forest Preserve President Dewey Pierotti was quoted in a 2-25-13 Daily Herald article as saying that the push to separate the two boards began because of concerns that county board members couldn't "serve two masters." "Sometimes there were inherent conflicts of interest. If a municipality wants to extend a road and went through a forest preserve, what way are you going to act? Are you going to vote as a county board member or a forest preserve commissioner?" Forest Preserve Commissioner Mary Lou Wehrli agreed, saying "I think the forest preserve (commission) is very well served being independent. Because when it wasn't, we were finding roads run through our forest preserves and other things that were not very sensitive to the environment." One example was the construction of Diehl Road through McDowell Grove Forest Preserve in Naperville. Another was when the combined county board and forest preserve district voted to extend the life of two now-closed landfills, Greene Valley and Mallard Lake.

The DuPage County Forest Preserve has had its share of controversy, including an investigation into the awarding of contracts, taxpayer concerns over finances, and questions about transparency. Most recently, Representatives Deb Conroy and Dennis Reboletti unsuccessfully attempted to reverse the separation of the boards by proposing legislation to eliminate the pay and benefits of the DuPage Forest Preserve Commissioners. They cited cost saving and the part-time nature of the job, which in most counties is handled by the county board.

Others were quick to disagree. DuPage County Forest Preserve President Pierotti issued a statement that "There is an inherent conflict of interest between a county's development interest and a forest preserve commission's environmental mission. The County Board is expected to vote on issues relating to infrastructure and development. The Forest Preserve Board is expected to vote on how to preserve open space and nature." Connie Schmidt, chairman of the local Sierra Club chapter, said "Prior to the split, difficult decisions which benefitted the county but disregarded the mission of the Forest Preserve District demonstrated why these two boards should be separate. Among these controversial decisions was the building of a school within Blackwell (Forest Preserve) and a road cutting through McDowell Woods." And Brook

McDonald, president of the Conservation Foundation, stressed that there were good reasons why the split was made, and "those reasons still exist today." He added that removing decision-making away from the bureaucracy of county government made the Forest Preserve's job easier." (Daily Herald, 2-28-13 and 3-15-13)

Kane County Board members are elected primarily to oversee the affairs of the county, and only secondarily to serve as Forest Preserve Commissioners. They may or may not have any knowledge of, or interest in, the forest preserves. Some have served with distinction and done a good job of balancing the interests of the two entities. But decisions about the acquisition and preservation of important natural lands should be made by people who are knowledgeable and passionate about nature. Serving the County's economic development needs should not be a factor. However, at the current time that is not the case. The population of Kane County is less than 600,000, so until such time as the population exceeds the 800,000 required to separate the election of forest preserve commissioners from the election of county board members, conflicts of interest are likely to continue. Kane County Board Members/Forest Preserve District Commissioners should recognize the potential for conflict of interest inherent in serving simultaneously on two boards with different missions and take steps to deal with that conflict in a forthright manner.

Transparency Issues

The Illinois Open Meetings Act (5 ILCS 120) states "It is the public policy of this State that public bodies exist to aid in the conduct of the people's business and that the people have a right to be informed as to the conduct of their business. In order that the people shall be informed, the General Assembly finds and declares that the actions of public bodies be taken openly and that their deliberations be conducted openly." In addition, the public shall be given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon in any way, with limited exceptions. All meetings shall be held at specified times and places which are convenient and open to the public. The written minutes of all meetings shall include:

1. the date, time and place of the meeting;
2. the members of the public body recorded as present or absent; and
3. a summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken.

The minutes shall be approved within 30 days after that meeting or at the next regular meeting, whichever is later. Minutes of the meeting shall be available for public inspection within 10 days after approval, and must be posted on the website of any public body that has a website maintained by full-time staff.

The Kane County Forest Preserve District has not always complied with the spirit or the letter of this law. The meetings may be open to the public, but the times and places are not generally conducive to public attendance. The Executive Committee, for example often meets at 8:30 a.m. on week days, which may be convenient for the commissioners and staff but not the general working public. When the District announced the public information meeting last year on the proposed plan for Brunner Forest Preserve, they scheduled it for Wednesday, April 11, 2012, between the hours of 5:00 and 6:00 p.m. at their headquarters in Geneva – more than 20 miles from Brunner Forest Preserve and the local people most interested in the plan, during rush hour on a week day. The timing seemed to indicate more interest in meeting a requirement for public input than in actually receiving any.

Meeting minutes do not always include a summary of all matters proposed, deliberated, or decided. As noted earlier, the November 7, 2008 minutes of the Executive Committee stated that "Staff is also looking at mining the gravel on the (Brunner) property; they will present a report in the coming months." A FOIA request for that report along with supporting materials was answered: "No such report was ever commissioned or written; . . .no such report was created, so none can be supplied to you." Were the minutes incorrect, or was a legitimate request for public information denied? Another example is the approval of the \$2 million contribution to the City of Aurora for the River Edge Park. Both the Executive Committee minutes of 2-5-10 and the Full Commission minutes of 2-9-10 record the approval this large expenditure with no discussion and no dissent noted. If, indeed, the minutes are accurate and this expenditure was approved with no discussion, then the commissioners were not fulfilling their obligations to the residents and taxpayers who elected them. If there was a discussion, it should be reflected in the minutes.

Those members of the public who wish to stay informed about, or participate in, the public business of the Kane County Forest Preserve District have their work cut out for them. Despite the requirement to post the minutes within 10 days of approval, there is sometimes a period of months between the date of the meeting and the date the minutes are available. A search of the District website on 3-29-13 for the most recent minutes revealed the following:

- For the Full Commission, the most recent minutes were for the 1-15-13 meeting, although the calendar showed that they were scheduled to meet on 2-13 and 3-12;
- For the Executive Committee, the most recent minutes were for the 10-5-12 meeting, almost six months prior, although they were scheduled to meet on 2-1-13 and 3-8-13;
- For the Land Acquisition Committee, the most recent minutes were for 1-18-13, although they were scheduled to meet on 2-28 and 3-15;
- For the Planning and Utilization Committee, the most recent minutes were for 10-25-12, although they were scheduled to meet on 1-18-13, 2-28-13, and 3-15-13; and
- For the Finance Committee, the most recent minutes were for 4-13-12, almost a year earlier, although they were scheduled to meet on 1-29-13.

It is difficult to imagine that there was no business requiring the action of some of those committees for months at a time, or why there were no minutes posted after scheduled meetings. One way to mitigate the lengthy delays between meetings and the posting of minutes would be to post the draft minutes after each meeting, before approval at the next meeting, as the DuPage County Forest Preserve District does. While the Open Meetings Act requires the posting of minutes within 10 days of their approval at the next meeting, that means more than a month's delay at minimum. When committees meet infrequently or irregularly, as the Finance Committee does, the public is denied access to information that they are entitled to have in a timely fashion. For all practical purposes, information delayed is information denied. Without public access, there is no opportunity for public input or public action.

The lack of access to minutes and information has even troubled Forest Preserve commissioners at times. When the Fabyan Property Utilization Task Force (Subcommittee) was created, Jim Mitchell, the chairman of the Forest Preserve Planning and Utilization Committee, was not one of those appointed by Kane County Board Chairman Karen McConnaughay, which seemed odd. Odder still, he complained that board members had not been kept up to date on the work of various task forces as much as he'd like. On 2-15-12, the Daily Herald reported, "Board members noted none of the meeting minutes from the special committee formed to discuss the future of the old jail/Fabyan Parkway site have been shared or are online for board members or the public to review. The proposed contract (to hire an outside consultant, the Lannert Group) did not go through the county board committee process before coming to the full county board for a vote." The \$59,000 contract was approved in a split vote, with five commissioners voting against it. Several months later, the lack of information remained an issue. In a 5-4-12 Daily Herald article, Mitchell said, "With the Settler's Hill thing, there's no minutes anywhere that I can find. So you don't know what those people discussed. This proposal is an attempt to make sure there are minutes so the whole board can know what's going on and that we have input into that task force so it's not set up to usurp any of our committee structure." If board members have trouble getting information, what chance does the public have?

The Freedom of Information Act (FOIA) was intended to "enable the people to fulfill their duties of discussing public issues fully and freely, making informed political judgments and monitoring government to ensure it is being conducted in the public interest." (5 ILCS 140/1) When Kane County area League of Women Voters participated in a joint project in 2009 to assess how well Freedom of Information or "Sunshine" laws were being followed by local units of government, they gave Kane County and the Kane County Forest Preserve District mixed reviews. Requests for information submitted as part of "The Citizen Initiative for Transparency: Public Document Audit" received replies that were incomplete or questionable as to their accuracy. Since then, there has been some improvement and more information is available on their websites, which reduces the need for FOIA requests. Kane County's website was given an

A- rating in 2012 by the Sunshine Review organization. Kane County Forest Preserve District has not been rated.

But as noted in this study, FOIA requests are not as user friendly as they might be and have not always produced results. In 2011, a search of the Forest Preserve website for "FOIA" came up with no result. The FOIA request form can be found under "Publications," but still cannot be filled out online; it had to be printed out and mailed in. The requested staff report on mining for gravel in the Brunner Forest Preserve, mentioned in the minutes, did not exist(?) and was not provided. The FOIA request for all long-term leases and IGA's was incomplete, in many cases lacking the maps, exhibits, or adequate descriptions necessary to identify the exact location and acreage of subject parcels. Still, the FOIA response time did improve, and the results of the 2013 FOIA request were transmitted online, even though the request could not be.

Beyond compliance with the Open Meetings Act and the Freedom of Information Act laws, there needs to be recognition of and respect for the public's right to know; a realization "that public bodies exist to aid in the conduct of the people's business and that the people have a right to be informed as to the conduct of their business." In the summer of 2010, two letters were sent to President John Hoscheit and Executive Director Monica Meyers telling them of the formation of this study group, and asking for information to assist us in conducting a balanced study. They did not reply. Study Chairman Carol Grom also spoke briefly to the Full Commission in August and invited President Hoscheit to address the study group at a future meeting, but still did not receive a reply or any information. So the study was conducted using publicly available information, newspaper articles, meeting minutes on the KCFPD website, and Freedom of Information Act (FOIA) requests. The lack of courtesy shown set an unnecessarily adversarial tone. And as the facts emerged, the level of public concern and distrust increased in direct proportion to the Forest Preserve District's perceived reluctance to acknowledge the story and explain their actions.

When the first phase of this study, the Study of Potential Gravel Mining in Brunner Forest Preserve, was released in May 2012, letters and CD's containing the complete text of the study and appendix of supporting materials were mailed to each of the Forest Preserve District commissioners. The only commissioner to respond directly was T. R. Smith, who said he appreciated the effort involved and that he learned a great deal from the report. President John Hoscheit did not respond to the LWV, but objected to the findings of the study at the May 4, 2012 Executive Committee meeting, and in comments to reporters covering the story, as a "mischaracterization of facts." In a Daily Herald article published the same day, he said, "The gravel mining discussion was about the benefits of creating a large lake that could be used for active and passive recreation and, from an economic perspective, we could derive revenue from the mining that could be used for that recreational purpose. That discussion was perceived as a potential win-win for the district if we could get the lake and additional money to acquire more preserves. (But) the board has said it's not going to do that." "Discussion of the gravel pit is a moot point. The issue is dormant. This continued paranoia about the gravel mining moving

forward is just that." But what bothered him the most was "the idea that the district isn't transparent." It should. We hope this study is helpful in tracing the origin of that idea.

Summary

Overall, this study finds that there is still room for improvement in transparency with regard to public access to information and, most importantly, acknowledgement of the public's right to know. Even when the Forest Preserve Commissioners honestly feel that they know best, and are making the best choices for the people they represent, they must make every effort to comply with the spirit as well as the letter of the law. They also need to be cognizant of the potential conflict of interest posed by serving on two boards with different missions, and take steps to deal with that conflict in a forthright manner.

There is room for concern that the KCFPD has seen some "mission drift" away from the original intent of preserving the flora, fauna, and scenic beauties of natural lands kept in their natural state. There has been a blurring of the distinction between a forest preserve district and a park district. Programs, services, and facilities should be secondary to preservation. In updating the master plan, the District should reanalyze its priorities and practices to more closely align with the mission statement. Rather than attempting to provide recreational programs, experiences, and facilities to meet the leisure needs of all ages and interest groups, it should focus on the core mission to preserve the nature of Kane County - in its natural state - for the education, recreation, and pleasure of its citizens.

And Kane County Forest Preserve District taxpayers should be able to feel confident that when they vote to approve a Forest Preserve referendum, that money will be used to acquire, preserve, and improve Forest Preserve land. There should be no diversion of tax money or donations to support other government entities. Nor should decisions made by the District defer to the interests of the County. We rely on our elected Forest Preserve Commissioners to represent our interests in preserving the nature of Kane County.

This study was not intended as an indictment of the Forest Preserve District Commissioners and staff. We strongly support the mission of the District and commend them for the good work they have done in expanding and restoring our forest preserves. Rather, it is intended to point out perceived problems and suggest a course correction where necessary. It is our hope that it will serve as the basis for a continuing discussion of how best to maintain the focus of the Kane County Forest Preserve District on its mission to preserve and protect natural lands.

League of Women Voters of the Elgin Area

2013 Kane County Forest Preserve District Study

LWVEA Position Statement Adopted by Consensus on September 18, 2013

1. Open Brunner Forest Preserve to the public and put a higher priority on restoration of this largest and most expensive purchase ever made by the Forest Preserve District.
2. Support SB 1344, introduced by Senator Michael Noland, or comparable legislation, to amend the Downstate Forest Preserve Act to ban any new sand, gravel, or other mining operations on land owned or acquired by a forest preserve district.
3. Support further amending the Downstate Forest Preserve Act to ban the extraction and sale of natural resources, including gravel, coal, timber, oil, natural gas and water, from land owned or acquired by a forest preserve district.
4. The core mission of the Forest Preserve District of Kane County is to preserve natural lands. We recommend the Commissioners analyze their priorities and practices to more closely align with this mission.
5. There is an inherent potential for conflict of interest in serving simultaneously on two boards with different missions. Therefore, we recommend the Kane County Board Members/Forest Preserve District Commissioners
 - take steps to deal with that conflict in a forthright manner; and
 - move toward the separation of the two boards with different individuals elected to serve on each.
6. The people have a right to be informed about the conduct of the people's business. The Forest Preserve District of Kane County must strive to improve compliance with the laws governing public access and transparency.