

City of Bay Village

Council Minutes, Special Meeting
Council Chambers 6:00 p.m.

July 8, 2013

Michael Young, Vice President of Council, presiding

Present: Clark, Lee, Miller, Tadych, Young, Mayor Sutherland

Not Present: Mr. Koomar, Mrs. Lieske

Others

Present: Law Director Ebert, Operations Manager Landers

Mr. Young called the Special Meeting of Council to order at 6:00 p.m. in the Council Chambers with the Pledge of Allegiance led by Ward 2 Councilman Clete Miller, and roll call.

ANNOUNCEMENTS

Mayor Sutherland advised that Bay Days this year was very successful. The Mayor reminded Council that she will not be present at the public hearing or Special Meeting of Council to be held on July 15, 2013, due to the fact that it is her birthday. Mr. Young will also not be in attendance that evening.

AUDIENCE

The following were present: Tom Henderson, Vince Donofrio, Dave and Kim Volle, Dennis Driscoll, Gerry Schreibman, Liese Nainiger, Al Kruger, Gerald Maloney, Ken and Mary Ann Sindelar, Bob Reed, Marty Mace, Susan Murnane, Susan Fink, Nancy Brown, Bruce Geiselman.

Nancy Brown asked if there is an estimate yet on the overtime accrued by police, safety forces, and the Service Department for Bay Days. Mayor Sutherland stated that there is not an estimate yet. Ms. Brown asked how much money has been donated by the Kiwanis Club to cover the expenses for Bay Day. Mayor Sutherland stated that this has not been determined yet. Ms. Brown asked when it will be determined. The Mayor responded that it will be determined when the money counting is finished.

Ms. Brown asked if there is a smoking policy for city employees when the employees are working. The Mayor stated that there is a policy and it is published in the employee handbook. Ms. Brown asked if Service Department employees are allowed to smoke in vehicles. The Mayor stated that they are not allowed to smoke in vehicles. Ms. Brown stated that this needs to be addressed. The Mayor asked for specifics; Ms. Brown stated that it should not be up to residents to report those violations; it should be known to the employees that it is not permitted.

Law Director Ebert stated that in 2012 the Kiwanis Club donated between \$3500 and \$5000 to

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the city for expenses for Bay Days. This is based on their receipts and is paid to cover the city's costs. The city has asked for additional funds every year to try to cover the costs. Kiwanis raised the parking fees one year to cover the costs, and raised the fees this year to the individual, non-profit organizations.

Mr. Ebert stated that the issue concerning smoking has been brought up before. When violations are identified they are reported to the Service Director and he takes appropriate action.

Ms. Brown asked with the amount of rain that has occurred every day, why are city hanging plants still being watered. Mr. Ebert stated that it is actually fertilizer that is going into the plants with liquid. It is not water. The summer help takes care of accomplishing that task. Mr. Ebert stated that many emails have been received complimenting the hanging plants, stating that they give the community its charm.

Ms. Brown stated that residents received duplicate sewer bills. She asked if there is an update on why this happened. Mayor Sutherland stated that this was a mistake that was made by the printer. It will not be corrected at city expense whatsoever. The printer set out complete sets of duplicate bills. Residents have been told to throw away the duplicate bill; the city is not trying to raise additional funds. The city will not be billed for the second mailing; the city will pay only for the first mailing.

Ms. Brown asked if the printer charges for additional colors in the city newsletter. Mayor Sutherland stated that the printing is done as cheaply as possible.

Ms. Brown stated that in the newsletter there is information about regionalizing the Fire Department and what is going to happen, and what is not going to happen. On Page 9 of the approved minutes of Council, Mayor Sutherland and Nancy Brown had a back-and-forth conversation about the most recently approved grant and what that is, and what it is not. Ms. Brown stated further that she has from the State of Ohio an email that Mayor Sutherland and the other Mayors are copied on. The email was sent by Mayor Sutherland on March 1, 2013, and it is the complete opposite of what has been communicated to the residents thus far. Basically, one of the sentences says that the ultimate mission is to have the four Fire Departments merge into a West Shore Fire District. Ms. Brown asked which document is the truthful document- this one that came from the Governor's office, or the ones that have gone to city residents.

Mayor Sutherland asked Ms. Brown if she has ever written a grant. Ms. Brown stated that she has written a grant. Mayor Sutherland stated that what they did in writing the grant is that would be the overall objective. However, as the Mayor mentioned in the newsletter, there are 76 different recommendations that were listed out in the study that they had done. They are still looking at – are they going to do nothing? Are we going to look at training? Are we going to look at just large equipment purchases? Or, will we ultimately look at bringing it all together. This is a long process. This is just another step in the study.

Dennis Driscoll, 30509 Willoway Lane, addressed the attempt of rezoning of the Cahoon Road property for the development of attached housing. Mr. Driscoll stated that he does not have strong opposition to the proposed rezoning. However, he is concerned with the secondary issue

that has been raised – the possible granting of property tax abatement for the development. On a policy issue, Mr. Driscoll feels strongly that it is not appropriate to grant tax abatements for luxury housing. Given Bay Village's commercial base, residential property owners pay significant property taxes. Additionally, Mr. Driscoll stated, he questions whether there is a need to grant tax abatement as indicated by current residential development in Bay Village. In the neighborhood where Mr. Driscoll lives, at Bradley Road and Wolf Road, two residences were recently demolished and from what can be seen on the new construction, two very upscale houses are going in at this time. Mr. Driscoll assumes that these residents have not been granted any property tax abatement, however, for the record, he would like City Council or whoever would be the appropriate official, to determine whether any tax abatements have been granted for these upscale homes. Besides the policy issue, Mr. Driscoll specifically makes an inquiry to the Council regarding the possible legal basis for granting tax abatements to this development, specifically the expertise of Mr. Ebert. Mr. Driscoll stated that his preliminary research to the Ohio Revised Statutes do not indicate to him a legal basis for granting this development a property tax abatement. He has reviewed the tax abatement statute listed on the Ohio Department of Taxation website which are the Community Redevelopment Corporation Abatements, Ohio Revised Code 1728.01, the Community Reinvestment Area Abatement, Ohio Revised Codes 3735.65, and the Municipal Urban Renewal Abatement Program which is Ohio Revised Code 725.01. Under these abatement classes, the primary authority to grant property tax abatement does in fact reside with the City Council. However, with the possible exception of the old Shell Gasoline Station property, the specifics of this development do not appear to meet the requirements of abatement under any of these programs. If anyone has researched this matter more closely and can specifically identify what statutory provisions the city may consider granting property tax abatement, it is requested that the statutory provisions be specifically or publicly identified for people to consider. Mr. Driscoll continued, stating that he realizes this is at an early stage, but it is something that people are very concerned about, and this is why he raises the issue at this time.

Mr. Young stated that he agrees that this is an issue that many people have concerns over. This is nothing that will be discussed this evening or voted upon. The City Council will have a public hearing on July 15, which will not specifically be regarding tax abatement, but within that meeting the subject will come up and partially be discussed. It is not the intent of today's meeting at all, and any of the ordinances being looked at have nothing to do with tax abatement.

Mr. Ebert stated that they are really separate issues, as far as the tax abatement and rezoning. The Shell Gasoline Station rezoning was a TIF (Tax Increment Financing) proposal with the development. The three parcels that are owned by Dino Lustri and Attila Cziszar on the corner of Cahoon and Wolf have been the subject of many type of developers who have come in and proposed to develop some type of attached residence, but because of the depth of the land it is hard to put in single family homes. If you go further down Cahoon Road there is the depth. Those are two separate issues that will come up in the public hearing as Mr. Young said, although they are not tied together. They are not even tied together for the developer who came forward to propose the development there. It could be any developer, once it is rezoned for attached residence. But, they are two issues that obviously will have ample discussion.

Mr. Driscoll stated that the way he reads the statutes, once the zoning issue is approved, the

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abatement issue is basically within the Council's purview, at least up to 75% of the value of the property.

Mr. Ebert stated that the abatement is only on the increase in value, not on the current value. The current value stays. Mr. Ebert noted that last week the City of Westlake approved tax abatement for ten years for the Hyland Software purchase of the racquet club. It is up to 75% and it is up to Council for that, it is not a vote that goes with the rezoning. Mr. Driscoll noted that unless you go above the 75% the school board doesn't even get involved.

Al Kruzer, 517 Cahoon Road, stated that he has lived here for 35 years and condominiums were tried about 35 years ago and it didn't work. Nobody wants condos. Any kind of condos. Mr. Kruzer stated that when he heard tax abatement, that's idiotic. He suggested that he be given tax abatement because when he added on to his home the taxes doubled for some reason. If you have a \$300,000 house, you pay \$8,000 in taxes. When they did Cahoon Ledges, that was supposed to be senior housing, they are all \$250,000 houses. They pay \$5,000 or \$6,000 per year in taxes. That's not senior housing. Go to the Knickerbocker Apartments if you want senior housing. There's no senior housing in Bay Village. Go to Avon, or Avon Lake. Tax abatement – there's no way in God's green earth.

Gerald Maloney, 29201 Inverness, stated that he lived not far from Mr. Kruzer for about six years. He stated that he does not know exactly what they are proposing in terms of attached residences. Being somebody with two children who in the next few years might be entering the Bay Village Public School System, he knows the property quite well. Adding multi-family units directly across from the Middle School is going to increase traffic significantly in an area where there are a lot of children walking by, and there is concern about the safety. Mr. Maloney stated that he is also concerned about the feasibility of it. We are talking about putting condos in a place where you are going to be directly in the line of sight for dozens of headlights coming out and shining in your front window at seven o'clock every morning during the school year. Or, having a perfectly good view of the dumpster behind the Middle School. He questioned how this would affect the character of the neighborhood, while understanding the difficulty in putting single family homes there and the owners of the property trying to sell it and make a profit. It is perfectly within their rights, but he is concerned about putting attached units or condos in that location as a safety issue, and as a general disruption of the character of the neighborhood.

Mr. Young commented that they are not condominiums. He does not think anyone would ever propose condominiums for that site, even in previous discussions. As the gentleman said earlier, condos don't sell now. Obviously, there are some in Bay Village and they do re-sell. Condo developments aren't really what we are looking at. Attached residence that would be individually owned is what we are looking at this evening, as opposed to condominiums.

Leise Nainiger, Lake Road, asked the value of the commercial property tax versus residential property tax.

Mr. Young stated that he cannot answer that question, but, he does know that if it were developed it certainly, whether it be residential and/or commercial, would bring in more tax revenues both on an income tax level and a property tax basis.

Mayor Sutherland stated that Finance Director Renee Mahoney could respond to Mrs. Nainiger's question.

Mrs. Nainiger stated that she is just concerned that there is so little commercial and retail establishment and not seeing more land go into that versus housing.

Mayor Sutherland stated that actually the city has a Master Plan and we have done some work over the last five or seven years on commercial areas. The city actually has a little too much commercial space so the advice from the experts has been if we can reduce it a little bit that would actually be better for the businesses.

Mrs. Nainiger asked if the Master Plan has indicated that the city is deficient in green space.

Mayor Sutherland stated that the City of Bay Village has some of the highest amount of green space per capita in Cuyahoga County, as compared to a lot of other communities.

Nancy Brown stated that with the Share the Road concept it appears that more and more bicyclers are riding double on Lake Road and Wolf Road. It has been observed that when there might be a puddle or chuck hole, lots of times the bicyclers do not give the appropriate hand signals that they are going to jump out and cars possibly have to swerve over a yellow line into oncoming traffic. Ms. Brown asked if some safety tips or some attention can be given to those significant safety issues for both people riding bikes and people driving their cars.

Mr. Clark stated that Pat McGannon has sent him some bike ordinances and it is time for the Environment and Safety Committee to take a look at those. This is something that will be considered at the next Environment and Safety Committee meeting.

Ms. Brown stated that other cities that allow this Share the Road concept do have striping specifically for bicycles. It is a safety issue.

Mr. Ebert stated that the striping for a bicycle lane was looked at in Bay Village once before. It was a trade-off for the Lake Road residents. They got sidewalks on the north side of Lake Road that the state paid for in lieu of having the bike lane. The people on the lakefront wanted it that way; the city wanted it, the Council wanted it, and that was a trade-off that the city granted. The width of the pavement is made for the width of a road for vehicles. The sidewalk was an improvement on the north side for residents, and anyone who walks on the north side. That is why the city opted for that versus the striping for bicycle traffic that is in Avon Lake.

Ms. Brown stated that Mr. Clark's suggestion to really look at the ordinances and educational pieces is following the right path. It is not safe when a bicyclist moves in front of you because there is a puddle or a check hole.

Mr. Clark stated that, to clear the question for Mr. Driscoll, he is not aware that City Council has voted on any tax abatement on Bradley and Wolf. To think that we are already sold on this concept is far too early in the process.

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Mr. Ebert stated that the two rezoning issues that went to the ballot were the Bay Commons development, and Cashelmara. The Shell Gasoline Station site went to the ballot, but that is on the retail side of the situation as far as what went to the ballot and passed. Tax Abatement or TIF (Tax Increment Financing) has not come before the Council for a vote. There have been times when the city accommodated with sewers or things of that nature, but not for any type of tax abatement.

Mr. Driscoll stated that this is why he is wondering whether there has been any extensive consideration of the statutory provisions.

Mrs. Susan Fink stated that the other day she was heading west on Wolf Road getting ready to turn south on Bradley Road and somebody on the south side of Wolf Road on the sidewalk, on a bicycle, went right across in front of her. When you are getting ready to turn, you don't expect a bicyclist to go right through the crosswalk and come right in front of you. It was an adult, and not a child. We need to educate people. The understanding of Mrs. Fink is that when you come to a crosswalk if you are on the sidewalk you must stop, and walk across and not go flying through. We need some more education, especially with the Bike Co-op and more and more people biking in the city.

There were no further comments from the audience.

Mr. Young called for a reading of the Minutes of the Special Meeting of Council held June 24, 2013. Mr. Tadych MOVED to dispense with the reading and accept the minutes as prepared and distributed. Motion carried 4-0, with one abstention (Mr. Lee). Mr. Young called for a reading of the Minutes of the Cahoon Memorial Park Trustees held June 24, 2013. Mr. Tadych MOVED to dispense with the reading and accept the minutes as prepared and distributed. Motion carried 5-0, with one abstention (Mr. Lee). Mr. Young called for a reading of the Minutes of the Public Hearing of the Tax Budget for 2014 held June 24, 2013. Mr. Tadych MOVED to dispense with the reading and accept the minutes as prepared and distributed. Motion carried 4-0, with one abstention (Mr. Lee).

Mr. Lee introduced **ORDINANCE No. 13-56**, amending by reading, REZONING CERTAIN LANDS LOCATED ON CAHOON ROAD, PERMANENT PARCELS NO. 203-09- 017, 203-09-018, 203-09-019, AND 203-09-020, CONTAINING 1.979 ACRES, FROM THIRD RESIDENCE DISTRICT TO ATTACHED RESIDENCE DISTRICT, AND DECLARING AN EMERGENCY.” Mr. Lee noted that the amendment by reading is changing the wording “First Residence District,” wherever it is contained in the ordinance, including the title, to “Third Residence District.”

Mr. Lee stated that the ordinance will not become effective unless it is approved by the voters at the General Election on November 5, 2013.

Mr. Miller asked if the emergency clause is required for three readings. Mr. Ebert stated that it is not required but it is included because if there would be a change because of a date of a Council meeting it can be adopted. It will go for three readings, but when you get to the third reading, if

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you only had two readings and there is not enough quorum for the emergency clause there could be passage to put it on the ballot.

Mr. Lee asked if the emergency clause is required to make the ordinance effective at the time it is adopted or is there a time period after it is adopted. Mr. Ebert stated that there is a 45-day time period otherwise. That would not be sufficient to reach the August deadline for placement on the ballot.

Mr. Tadych stated that in Section 1, mid-section, there is a typographical error, reading "ils." Mr. Ebert stated that he will leave it because it is written that way from the county record.

Mr. Young stated that there have been a number of discussions regarding tax abatement. That is a discussion to be had at another meeting, and hopefully we will have that and the public will be fully informed of each individual position and if there needs to be a vote on abatement. More importantly, Mr. Young stated that he does not take redistricting single family zoned land to multi-family lightly. It is a topic in his ward that is a very concerning one, in regard to can it be changed, but also what are the particulars as far as number of units per acre, etc. Mr. Young stated that he will vote to approve this because it is a unique property as far as the location next to commercial property, on the opposite side it does not have homes. It is next to the park on the north side. It really only affects on home at the very far south and in that regard it is rather unique and is more commercial and in character than third residence.

Mr. Lee noted that there will not be a vote on the legislation this evening. It is on First Reading. He stated that he appreciates Mr. Young's comments and he is correct it is a unique parcel with the retail business district to the east, parklands to the north, and the library and Middle School to the west.

Mayor Sutherland that this also would have to be passed by both the voters in Ward 2 and city-wide.

Ordinance No. 13-56, as amended, was placed on **First Reading**.

Mr. Lee introduced **ORDINANCE NO. 13-57** ENACTING NEW CODIFIED ORDINANCE CHAPTER 1158B ENTITLED CAHOON WEST ATTACHED RESIDENCE DISTRICT, AND DECLARING AN EMERGENCY.

Mr. Young thanked Law Director Ebert stating that he thinks it is a great ordinance as far as spelling out the intent and reasoning behind the ordinance within the document.

Ordinance No. 13-57 was placed on **First Reading**.

Mr. Clark introduced **RESOLUTION NO. 13-58** ACCEPTING DONATION FOR THE CITY OF BAY VILLAGE COMMUNITY SERVICES DEPARTMENT AND DECLARING AN EMERGENCY, and moved for adoption.

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There being no further discussion, Mr. Young called for a vote on the motion to adopt Resolution No. 13-58.

Roll Call on Suspension of Charter Rules:
Yeas- Clark, Lee, Miller, Tadych, Young
Nays-None
Roll Call on Suspension of Council Rules:
Yeas –Clark, Lee, Miller, Tadych, Young
Nays–None
Roll Call on Use of the Emergency Clause:
Yeas –Clark, Lee, Miller, Tadych, Young
Nays -None
Roll Call on Adoption:
Yeas–Clark, Lee, Miller, Tadych, Young
Nays–None

Mr. Young announced adoption of **Resolution No. 13-58** an emergency measure, by a vote of 5-0.

Mr. Young announced that a Public Hearing for Ordinance No. 13-56 will be held at 7 p.m. on Monday, July 15, 2013.

Mr. Clark asked if a majority of Council, five of the seven members, is required for a vote of passage. Mr. Ebert stated that a majority of the whole body of Council, four members, is required for passage. The emergency clause is a moot issue after three readings. The effective date of the ordinance would not be until it is approved by the electorate on November 5, 2013.

There being no further business to discuss, the meeting adjourned at 6:45 p.m.

Michael A. Young, Vice President of Council

Joan Kemper, Clerk of Council