

City of Bay Village

Council Minutes, Committee Session
Council Chambers

August 5, 2013
8:15 p.m.

Paul A. Koomar, President of Council, Presiding

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

Also Present: Law Director Ebert, Finance Director Mahoney, Service Director
Galli, Operations Manager Landers

AUDIENCE:

The following audience members signed in this evening: Conda Boyd, L. Dyko, Carl Frey, Gerry Schreiberman, John Brooks, Susanne and Vince Donofrio, Michael Sathre, Jerrie Barnett, Ken and Maryann Sindelar, Greg and Diane Puntel, Briant and JoAnn Valerino, Neil Wensink, Marty Mace, Tom Henderson, Paul Vincent, Mike O'Boyle, Dick Majewski, Dave Volle, Kim Volle, Terry Cariglio, Bill and Peggy Dawe, Timothy Golden, William Clements, John Suter, Glenn Bender, Ned and Sharon Topping, Roger Svehla, Susan Murnane, Dennis Driscoll, Al Kruzer, Russell Thompson

Prior to calling a special meeting of Council to order, Mr. Koomar convened the Committee Meeting of Council which included a review of the agenda of the Special Meeting of Council to follow the Committee Meeting.

During the review, Mayor Sutherland advised that the Civil Service test for Police Chief will be held on Saturday, October 5, 2013. It is expected that a decision regarding appointment will be made within thirty days following the test date. Mayor Sutherland also noted that Nixle Dial has been implemented by the City. The Fire Chief and Interim Police Chief, as well as the Mayor, have been trained on the system. All land-line telephone subscribers are automatically in the system. If there is an emergency and the dial portion is initiated, land-line users will automatically receive a telephone call.

Resident John Suter asked if there will be a test of the system. Mayor Sutherland stated that a test will be given at a date to be announced. They would also recommend that those residents who have access to computers and cell phones sign up for the Nixle text messages and email blasts that are available through that system. The Mayor suggested that residents consider not getting rid of their telephone land-lines. Mayor Sutherland reiterated that residents can sign up through their computers for cell phone text messages in the event of emergencies. For telephone land-lines they are automatically incorporated into the system and do not have to sign up for the service.

Mr. Tadych asked if unlisted telephone numbers are automatically included in the Nixle Dial-Up program. Mayor Sutherland stated that they are included.

Mr. Clark asked that the information concerning the telephone and text message notifications be announced through an email blast to the residents and on the message board in front of city hall. Mayor Sutherland stated that they will let everyone know when the test is going to happen and see this as a good way to make sure people understand how they are going to be contacted and what it sounds like so that they at least can experience that in a non-emergency situation. The test may occur in September when vacation periods are over.

Conda Boyd, 27896 West Oakland, made the following statement as a Ward 2 resident.

“First, I want to thank Mayor Sutherland, Councilman Lee, Mr. Krakowski in the Building Department, and most of all Joan Kemper, who all responded graciously and quickly to my public records requests. Over the last two weeks, I have waded through volumes of Council and Planning Commission minutes, the Bay Village Master Plan, the Kent State study, current and working copies of the Attached Residence District legislation, and the County Auditor and Planning Commission websites.

What did I learn?

In 1999, the Master Plan recommended comprehensive updates to our zoning codes and map, including the very changes proposed tonight for the Cahoon West property. That City Council chose not to make the updates.

In 2004, the Retail Improvement Strategy (Kent State Study) recommended the changes before you today. That Council also chose not to act.

In 2008, at the recommendation of the Planning Commission, that Council refused to put rezoning for this property on the ballot until the Attached Residence Chapter (1158) was updated.

Since 1999, as Commission, Committee, or Council members, nearly every member of this Council has cast more than one vote to put updating before rezoning because the current ordinance is seriously flawed.

Tonight, you're voting on whether to put rezoning on the ballot, and you are promising an ordinance rewrite will be passed before the end of the year.

What if it isn't?

The proposed changes are not minor: nearly every line item in this long, complex ordinance is affected. It will not be easy to finish this 14-year labor.

And if you fail to enact an update, but the rezoning passes, development can proceed under the current flawed rules.

It's not just about Mr. Lustri's property. The Master Plan targets Ward 2 for much more attached residence housing. Mayor Sutherland, Mr. Koomar, Mr. Miller: You have all represented Ward 2.

This is not an obscure back street. It's a pivotal corner of our city.

I do not see how any of us can vote to rezone Mr. Lustri's property as attached residence unless we thoroughly understand what an attached residence is.

You owe it to us as fellow Ward 2 residents to put the horse before the cart.

And if you want attached residences to be built, you owe developers a definition that they can rely on.

But let's update the Attached Residence ordinance before we open ourselves to the possibility of building under rules that each and every one of you has publicly said are flawed.

Thank you.”

David Harrison, 384 Tanglewood Lane, stated that he agreed wholeheartedly, and to just vote on attached residences or condominiums, without knowing what they are going to be in density and architectural appearance, is not something that he can vote for. What is the proposition on the ballot? What does it say? And, what happens after that? What are we voting for – attached residences, is that it?

Mr. Koomar stated that this legislation is for a specific piece of property on the corner of Wolf Road and Cahoon Road, and the zoning would mirror the property that is known as the former Shell Station site and bank ATM areas that were rezoned a few years ago. As Condo Boyd stated, there are attached residence regulations through an ordinance that is existing on the books, and it has been long-sought-after to update those for various features in the code. This is what Councilman Lee's Planning and Zoning Committee is reviewing.

Councilman Steven Lee addressed Mr. Harrison in order to specifically answer his questions. There are five parcels on the west side of the Cahoon Creek consisting of 2.4 acres that Council will be voting on this evening. The property on the east side of Cahoon Creek, approximately 1.7 acres, was already rezoned in 2010 by vote of the residents. The retail business district, which that property is already a part of, was modified to include attached residences as a permissible use in that retail business district area. The density was changed to allow up to eight dwellings per acre, and the minimum acreage requirement was reduced to one acre, from five which the general Chapter 1158 requires. As Ms. Boyd mentioned, there have been flaws identified in the existing chapter by parties that have looked at it over the years, and one of the main flaws has been the acreage requirement at five acres, and the density requirement at six dwellings per acre. These are the main areas that need to be re-addressed that have become obsolete in this day and age. That chapter was passed in 1974, and there has been very little attached residence district development in our community since that time period. We have Bay Commons on Bradley Road, and we also have Cashelmara as the only two attached residence developments. The proposal that is on the table tonight is to rezone to attached residence the parcels on the west side of Cahoon Creek and reduce the acreage requirement to the acreage of that parcel which is approximately 2 ½ acres and to also increase the number of dwellings per acre that can be developed from eight to six dwellings so that it would mirror the density on the east side that was approved in 2010.

Mr. Harrison asked about height restrictions. Mr. Lee stated that 30 feet is the existing height restriction. That would not change. There are green space restrictions, buffering restrictions, and, as Ms. Boyd mentioned, the legislation is quite extensive with a lot of requirements. All of those would continue to apply. The Planning Commission process of plan review would have to go forward before any plans would be approved. We would have to satisfy all of the parking requirements, and the ingress and egress requirements. There have been concerns mentioned about safety vehicle access. That would all be looked at as part of the plan review.

Mr. Harrison commented that the gentleman who is interested in this property is the person who has developed the condominiums on Sloan Avenue in Lakewood. Mr. Harrison stated that he would hate to see that sort of architecture in Bay Village, especially at the Cahoon Creek.

Mr. Lee stated that the Architectural Board of Review would have to approve any plans for this. He expressed agreement with Mr. Harrison stating that he would hate to see something like that built in that particular property. Mr. Brickman is one of the developers that has expressed interest in this. This is not an endorsement of Mr. Brickman's proposal and he is not necessarily the developer that may develop the property if this goes forward. The east side was rezoned in 2010 and it hasn't had any progress on development since that time. It could be the case if this were approved by the voters in November; the property could sit several years as is without any activity. We've heard tonight that this Council, at least those who have spoken up as part of the Finance Committee, are not interested in any tax abatement for that type of development. Whether the free market would allow that type of development and who the ultimate developer would be, that remains to be seen.

Mr. Tadych asked Law Director Ebert to speak about the riparian legislation put in place in prior years on that type of property.

Mr. Ebert stated that riparian regulations have to be met. This is why we have a codified ordinance chapter on these regulations. You cannot build within 25 feet. All of the concerns of setback, parking, ingress and egress, and buffering, are all set in place and have to go to the Planning Commission. Although there has been one developer who has expressed interest, it doesn't matter who will develop the property, it still has to go through the same issues. The issue that is before the voters is changing the density requirement, the number of units that can be built per acre. The depth of the property is shallow. There have been developers throughout the years looking at that property. The density issue could not fit with their projects. Just by changing it to attached residence district does not mean there could not be single family homes built there. Single-family is more restrictive, but there would still be that option.

Resident Susan Fink stated that she has a concern of the property on the west side because some of it is unbuildable due to the riparian legislation restrictions. When we are talking acreage, are we talking buildable acreage? That is a concern.

Mr. Lee stated that Mrs. Fink is correct. The acreage of 2.43 acres is the total acreage of the property; it is clearly not all buildable, especially with riparian rights. If a development does occur there, the developers that have expressed interest in this have estimated they would build somewhere less than 14 residents on that west side. Even though it might be 2.4 acres with a density of eight per acre, which would suggest a higher number, it would most likely be fewer, and that would have to comply with all of the building code requirements and riparian rights. It would certainly limit the number of residences.

Mrs. Fink asked why the city does not change it from total acreage to buildable acreage, because of so many streams in the city.

Mr. Ebert stated that several years ago there was a similar situation on the north side of the city, where the state came forward and was going to put a restriction on homes on the lakefront. There was such uproar along the lakeshore that the state legislation was tabled. We still have to comply with riparian rights. You can't build if you don't have the square footage based on what the lot looks like, with the high water mark, etc. That is still a requirement that is going to be looked at by the Planning Commission when there is an application. For us to change that would be putting the city in a situation that is going to be fluctuating based on water levels, how the state regulations, and the Ohio Department of Natural Resources (ODNR) comes into play.

Mr. Koomar stated that this is something the Planning and Zoning Committee can review when they look at Chapter 1158. If you overlay the riparian legislation on it, you will find there has to be a setback on either side of the creek, and that, practically speaking, is going to take care of some of those concerns.

Ms. Boyd stated that Mr. Lustris asked to have that property sub-divided just before the riparian legislation was passed. That allows him to go back and ask for variances. Ms. Boyd asked if Mr. Ebert can speak to how that would impact what is buildable on that property.

Mr. Ebert stated that the various boards in the city, the Planning Commission and the Board of Zoning Appeals, would be the proper boards to go forward with variances. The applicant would have to present their application to those boards. Riparian regulations would be reviewed as part of that process. The applicant would have to show how they are going to meet those regulations if the property based on the subdivision creates a "unique, buildable lot."

Ms. Boyd stated that there was much discussion in the minutes about the fact that the subdivision passed after the riparian legislation it would not be a usable lot. Because the subdivision was passed before he can ask for variances. Mr. Koomar stated that for the homeowners in the city that have put decks, patios or additions on their homes, the same could be said. They were built prior to the legislation and those are grandfathered in as well.

Don Kuehn, Cahoon Road, asked the percentage of the property that is unbuildable. Mr. Koomar and Mr. Ebert stated that they do not know. Mr. Ebert suggested that a survey may need to be taken because a survey has not been done on the properties by the Council or administration. Mr. Kuehn suggested that this should be known before increasing the density.

Mr. Young stated that as the information comes to light it reduces the number of units, so the matter takes care of itself. If it were all buildable, the developer would be able to put 8 units per acre. As you take into consideration riparian regulations or unbuildable areas, that decreases the number of units allowed to be built. The more area you have that is unbuildable reduces the number of units.

Diane Puntel, Cahoon Road, asked if there will be two issues on the ballot. One to change the density, and the acreage? And, the rezoning? Ms. Puntel was informed that the rezoning would be the only issue on the ballot. By charter, that would be put on the ballot for the November General Election. It would have to be approved by the citizens of the city as a whole, and the residents of Ward 2. The changes to create Chapter 1158B, which would provide for the acreage

and the density, would be a Council action. Mr. Ebert added that if the rezoning does not pass in November the ordinance is null and void concerning the density. Mr. Lee added that Council thought it important to have that as one package so that before the voters go to the polls they know exactly what Council's thoughts were on that property. They also thought that by doing it this way it would be more easily understood as opposed to as part of a larger rewrite of Chapter 1158 which involves many variables which the Planning and Zoning Committee is working on and hope to have something for Council to consider before the end of the year.

Mr. Harrison addressed Mr. Lee, commenting that Mr. Lee is stating that if the residents vote for it, the Council will put into law those restrictions and densities and everything that the residents were told about tonight. Mr. Lee responded, stating that with respect to those five parcels the acreage requirement would be met, and the density. All the other provisions of Chapter 1158 would still apply, for instance height as mentioned by Mr. Harrison. The residents do have the protection of the provisions that are in Chapter 1158 today. The Planning and Zoning Committee is working on updating Chapter 1158, which they hope to do by the end of the year.

Mr. Harrison asked how Council plans to update Chapter 1158 in the future. Mr. Lee stated that Chapter 1158, the attached residence chapter, is considered outdated by most planning professionals. It is the provision that any development of an attached residence nature would have to comply with today. When Cashelmara was developed there was actually a separate Chapter 1158A that was passed just for Cashelmara at that time. This Chapter 1158B is the same approach, but with respect to these five parcels, which Council is referring to as the west bank of Cahoon Creek.

PUBLIC IMPROVEMENTS, STREETS/SEWERS/DRAINAGE COMMITTEE

Award of Contract for 2013 Pavement Maintenance and Resurfacing Program

Mr. Miller called upon Director of Public Service and Properties Galli who commented on his memorandum to Council dated August 1, 2013, outlining the bid summaries from four bidders. Bids ranged from a low bid of \$577,342.10 to a high bid of \$617,219.19. The project was estimated at \$472,320.00. Juneway and Conover Roads were included as an alternate at \$37,000. It is anticipated that the contingency amount of \$105,915.00 will be reduced to \$70,892.90. Mr. Galli recommended that the contract be awarded to the low bidder, Chagrin Valley Paving in the amount of \$512,342.10, removing two additional items (ADA concrete ramps and a contingency item) not included in the budget.

Mr. Clark commented that it is important to begin the work on this project without delay. Mr. Tadych asked when the work will begin. Mr. Galli plans on beginning the work in two to three weeks, if the contract is awarded this evening, and be completed in three to four weeks after onset.

FINANCE & CLAIMS COMMITTEE

Discussion on Concept of Tax Abatement

Mr. Young stated that the Finance Committee would suggest that Tax Abatement or TIF only be used for distressed, under-utilized, undeveloped, or undeveloped projects where development could not occur otherwise. In incentivizing any project, we should first look to other means such as county or state programs. All projects should be considered based on the general welfare of the city as a whole, that such projects should fall within the developmental goals of the City's Master Plan or the Kent State University study, as they are now, and in general they be reserved for commercial developments.

Mr. Lee expressed agreement.

Mrs. Lieske expressed agreement.

Consultants for Human Resources and Water Lines

Mr. Lee reiterated that he thinks that the city should not wait on engaging a consultant on the study of water lines, because it is a time-consuming process. It is recommended to move forward with a consultant for that purpose. We do not want to be in a reactionary position if and when the Westlake water line separation occurs. We should also obtain as much information as possible from the City of Westlake and City of Cleveland Water Department, but we need to have our own independent eyes on the issue so that we are comfortable with some of the conclusions that will be drawn from those studies.

Mrs. Lieske stated that she would also concur with the idea of going forward with the Human Resources consultant, just seeing how things are on the horizon.

Mr. Koomar addressed Mr. Tadych, stating he knows that Mr. Tadych had some concerns expressed in the Finance Committee meeting earlier this evening, on the timing and funding of a consultant for the water line study. Mr. Koomar noted that part of that process is going out and getting the bid qualifications, which does not mean that money is being expended. It is more of doing our due diligence and having things in place, and potentially having two or three phases to a project it makes sense to execute it in an appropriate time.

Mr. Tadych agreed, stating that it will be time consuming.

PLANNING, ZONING & PUBLIC GROUNDS AND BUILDINGS COMMITTEE

Police Station Sign

Mr. Lee commented that Council has been provided with a sketch with dimensions for a proposed new sign for the Police Station. Most of the materials to be used for the sign are recycled materials used for other projects in the city. The Architectural Board of Review approved the proposal on July 10, 2013. Total cost to the city for the project is \$2,500. The sign will be set back from the sidewalk approximately 8 feet, and 25 feet west of the drive of the Police Station. Mr. Koomar expressed the importance of keeping the sight line open for pedestrians and bicyclists when considering final placement of the sign.

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A sign for the Fire Station will be further reviewed by the Architectural Board of Review prior to submission to Council.

RECREATION AND PARK IMPROVEMENT COMMITTEE

Mrs. Lieske reviewed the items discussed at a Recreation and Park Improvement Committee meeting held this evening at 6:30 p.m. Discussion items included an update on the Community Gym, a fitness trail, recreation center membership rates for Bay residents with nearby communities, and a possible recreation resident survey.

Mayor Sutherland stated that the administration talked about doing a survey concerning recreation after they completed the resident satisfaction survey last September.

Mrs. Lieske stated that the citizens Parks and Recreation Committee will also be asked what their interests are in terms of a survey. Mayor Sutherland noted that one way of getting out a survey in this regard would be to take advantage of the services of Survey Monkey, as well as polling those who use the services of the Recreation Department. The *Westlake/Bay Village Observer* has also volunteered to help with a community survey.

The Recreation and Park Improvement Committee meeting this evening also included a presentation by Bay resident Carl Frey concerning possible re-design of Cahoon Field. Mr. Koomar raised the question of the cost of these improvements and the source of funding. The proposition was very interesting. The committee will also see what information comes out of a survey and where that might go in the future. Mr. Clark shared some ideas about how the Field of Dreams was funded with Bay High School.

The Recreation and Park Improvement Committee received an update on participation in summer activities.

SERVICES, UTILITIES & EQUIPMENT COMMITTEE

Mr. Tadych will present a resolution at the special meeting of Council to be held this evening asking the Ohio Department of Natural Resources for funding for Emerald Ash Borer diseased trees.

Mr. Galli stated that a copy of the grant application has been provided to Council. A motion was previously passed by Council to proceed. The resolution, after passage this evening, will be included as part of the application.

Mr. Tadych noted that Council has received a list of the trees to be removed. The grant for removal of trees is in the amount of \$15,800.00, which represents half of the cost of removal of the trees.

Bradley Road Park Tennis Court Resurfacing

Mrs. Lieske noted that a motion is included on the agenda for the Special Meeting of Council this evening to ratify advertisement for bids for the sport surface at the Bradley Road Tennis Courts and Basketball Courts. Mr. Koomar stated that it was brought to Council's attention that the top layer for the Bradley Courts, an acrylic layer that goes down to keep the asphalt and playing surface in good condition, is in need of replacement. The motion is to ratify the advertisement for bids which was done by the Service Director after discussing the need with Council. In order to be in compliance, it is necessary to ratify the advertisement at this time.

Mrs. Lieske asked if there are any concerns, given the weather issues that have been faced recently, with the Dover Center Road Tennis Courts. Mr. Galli stated that there are always weather concerns when dealing with materials like this. The Service Department will have to work with that, along with complications to the schedule of the high school program. Recreation Director Enovitch and Mr. Galli have contacted the high school and are working things out. Mrs. Lieske noted that the high school teams are starting tennis play. Mr. Koomar stated that this work will only take a few days. If there is a stretch of warm weather, schedules may be shifted to the Dover Center courts, which will be worked out by Mr. Galli and Mr. Enovitch.

SERVICES, UTILITIES & EQUIPMENT COMMITTEE (continued)

Mr. Koomar asked Mayor Sutherland if the last discussion with residents regarding brown-outs in certain areas within the city included anything at this point in time that might benefit from being referred to the Services, Utilities and Equipment Committee. Mayor Sutherland stated that she believes they are in good shape right now. They actually had a lot of activity on some of those streets in Ward 1 and Ward 2 last week with the forestry crews being deployed over there. Mr. Tadych noted that the crews are still there today. Mayor Sutherland stated that the government representative from First Energy is still awaiting information from the voltage meter they have attached to one of the homes.

MISCELLANEOUS

Mr. Clark is making arrangements for Council to tour the Lake Erie Nature and Science Center. Responses with potential dates should be emailed to Mr. Clark.

There being no further discussion, the meeting adjourned at 8:57 p.m.

Paul Koomar, President of Council

Joan Kemper, Clerk of Council