

Minutes of a Meeting
of the
City of Bay Village Planning Commission
held October 2, 2013

Chairman Dzienny called the meeting to order at 7:30 p.m. in the Council Chambers of Bay Village City Hall.

Present: Dzienny, Lesny Fleming, Majewski, Persanyi

Absent: Mr. Lee, Mr. Maddux

Resignation Submitted: Mr. Bruckman

Following the roll call, Mr. Dzienny called for approval of the minutes of the meeting held July 3, 2013. **Motion** by Persanyi, second by Lesny Fleming, to approve the minutes of the meeting held July 3, 2013, as prepared and distributed. Motion passed 4-0.

Review of provisions of Chapter 1158 of the Codified Ordinances of the City of Bay Village as set forth in the September 5, 2013 memorandum by Chief Building Official John Cheatham, and reviewed in the meeting of the Planning and Zoning Committee Meeting of September 5, 2013, as well as the rezoning of the Cahoon West property, and Chapter 1158 (B)

Mr. Dzienny stated that the Planning Commission has received a packet of information including minutes of previous Council meetings for this review. He noted that this began with the proposed rezoning of the Cahoon West parcels. He stated his opinion that he does not like to target ordinances. The proposed Chapter 1158 (B) is the exact acreage of the property for rezoning, and doesn't even leave any leeway for it to be applied anywhere else in the city. When reading through Chapter 1158 (A), it can be argued that it can apply anywhere. There are not too many places in the city that fit that need, but it at least was written to leave it open for more than just the Cashelmara development.

Mr. Persanyi stated that Chapter 1158 (A) was written the way it was because the property included an historical building that was to be incorporated as part of the project.

Mr. Persanyi questioned the acreage spelled out in Chapter 1158 (B). When Mr. Dino Lustrì appeared before the Planning Commission, he was going to do a lot consolidation and a lot split. One of the problems encountered by Mr. Persanyi was that the lots that Mr. Lustrì was proposing went to the center of the road. There is no dedicated public right-of-way there, and if this issue passes, someone or someone from the city should establish the exact acreage and establish the

public right-of-way for Cahoon Road, so that in the future when a utility or sewer main has to be replaced it can be done in the public right-of-way and not have a situation where each attached residence owner has to be approached for an easement to build a sewer. A portion of the property should be made part of a dedicated city street and then whatever remainder is there, the number of units should be governed by the actual private land instead of including the public right-of-way. There were five legal descriptions of the various parcels. In some cases the starting point is at the center of the street. Mr. Persanyi cited an example of his property where the description starts at the center of Wolf Road, but then as far as the legal description there is a 45 feet permanent highway easement that is public property. There should be the same situation with these parcels. There should be a public right of way, and whatever is left would be a certain acreage, and number of units per acre would be governed by that acreage that was remaining.

Ms. Lesny Fleming and Mr. Dzienny stated that Mr. Persanyi's comments make sense. Mr. Dzienny noted that the issue is going to the voters.

Mr. Persanyi agreed, but said that at some point it will come back to the Planning Commission if it passes. At that point, the Planning Commission will have to decide if the number of acreage is correct. Part of the parcel, which is primarily Dino Lustrì's property, had that issue. There was no publicly dedicated right-of-way.

Mr. Dzienny stated that the Chapter 1158 (B) spells out 2.349 acres is the minimum area for development. If the public-right-of-way is included, the minimum required acreage won't be met. Mr. Persanyi stated that he suspects they will not meet the minimum required acreage because a number of the descriptions talk about the center line of Cahoon Road and center line of Wolf Road as a reference for a starting point. It appears that the northern most parcel does take into account the Wolf Road right-of-way, but the parcels along Cahoon Road do not. This is something that should be straightened out. If it is too late to change the wording it certainly should be straightened out if it comes back to the Planning Commission with development plans. The Planning Commission can establish that it is not all private property; part of it is what should be public right-of-way. The final number should govern how many units could go in there, based on the density of eight units per acre.

Mr. Dzienny stated that he has a problem with how specific the ordinance is. "Are we going to write ordinances for anyone who wants to come in and develop?" Mr. Persanyi stated that at first he was of the same opinion. If this work is going to come to the Planning Commission it should be under Chapter 1158. Chapter 1158 should be revised to reduce the minimum acreage. He noted that the Zoning Review Committee, under the leadership of former Building Director Doug Milburn, along with Mr. Majewski, Mr. Jack Norton and he spent countless weeks meeting once or twice a week comparing codified ordinances of other communities for this type of development. They produced recommendations that they all agreed upon as to the minimum

acreage, number of units, green space to be maintained, and size of units. All of this was passed on to Council at that time. Mayor Sutherland, as well as Councilman Tadych, sat in on a few of these discussions. Nothing happened as a result of that work.

Mr. Persanyi further commented that usually when there is a legal description they give you the meets and bounds, and the number of acres. Some of these descriptions don't have that. Part of the problem is they are assuming the property line is on the center of Cahoon Road.

Mr. Persanyi stated that part of the problem, as pointed out by Mr. Majewski, is that this should have come to the Planning Commission specifically as an agenda item. When Mr. Lustrri came in to get his lot consolidation and lot split, he was doing that to beat the time limitations on riparian setbacks. As an aside, Mr. Lustrri stated that he had a great set of plans that he would like to show the Planning Commission. He brought it in and informed the Commission that this is what could be done on that property. At that time his property came to 1.87 acres. But even then there was the question as to whether that included the public right-of-way. Mr. Lustrri was informed by the Planning Commission that Chapter 1158 requires five acres. Mr. Persanyi informed Mr. Lustrri that it was a great set of plans, a wonderful idea, but he would have to talk to Council about changing the requirements for minimum development and the land would have to be rezoned and unless there was a convenient election coming up it would be at his expense. That was the first time development for this area came up, other than when Frank Celeste, when he was Mayor of Lakewood, proposed a high-rise apartment building along Cahoon Road. This was voted down by the voters.

Mr. Dzienny stated that Mr. Lustrri commented that the Planning Commission approved his rezoning proposal. He noted that the Planning Commission did not take any action. Mr. Lustrri was referred to Council. Council would have to inform the Planning Commission that there was a proposal for development and some guidance is needed. Mr. Dzienny noted that this should have occurred a while ago for the Planning Commission to give their opinion before the Council writes it up to put it on the ballot. The Planning Commission has had no input. They want the Planning Commission to review what they have done, which is meaningless.

Mr. Majewski stated that he met with Law Director Ebert who informed him that this rezoning was initiated by the land owners. According to the administrative code, something that is initiated by the landowners must have an application made to the Planning Commission. Since this is being rezoned from a more restrictive classification to a less restrictive classification, the applicant is to come in person to the Planning Commission and explain why this rezoning is needed. None of that took place. The process was in the code and it wasn't followed. They can go directly to Council, if Council initiates it. The Law Director stated it was initiated by the landowners. Repealing the ordinances that were adopted for this rezoning is the only way to solve the problem because the Charter was violated as well. The Charter states that these

ordinances were supposed to come to the Planning Commission before they were adopted by Council. That did not happen either, which Mr. Majewski questioned to City Council in August. We are at a point now where there is a moratorium being proposed to be voted on. That is the compromise. The question is who they are compromising with. It doesn't solve the problem. They are still in violation of the Charter and the administrative code. The conversation about writing codes for specific developers and developments occurred a while back. Here we are doing it again. There was no input at all this time from the Planning Commission.

Mr. Persanyi stated that the idea of a moratorium is meaningless. If the issue passes, the week after the issues passes they can end the moratorium. Chapter 1158 (B) would still go into effect because that hasn't been repealed. If Chapter 1158 (B) is to become a new chapter in the zoning code, it should have been clearly written and finished. It should contain everything from the density to the setbacks, so that people could come in and see the proposed ordinance they are going to be voting on.

Mr. Majewski stated that even if the rezoning issue passes on the ballot, Council can change Chapter 1158 (B) whenever they want. According to the Charter, it still has to come to the Planning Commission before it can be adopted. It is a zoning regulation.

Mr. Dzienny noted that the Planning Commission can be over ruled by Council. They only have the power to suggest.

Mr. Majewski stated that his point is that if the Planning Commission doesn't draw a line now and state that these two ordinances need to be repealed, Council will never send another zoning ordinance to Planning Commission, or any ordinance that has to do with zoning. That Charter amendment will be made null and void, and the only people that can change the Charter are the voters. By saying that Chapter 1158 (B) especially doesn't have to come to the Planning Commission, that's not on the ballot. Mr. Ebert's reasoning that Section 7.6 of the City Charter overrules Section 7.4. Chapter 1158 (B) is not on the ballot. It is a separate ordinance. The only ordinance that is on the ballot is to rezone. Chapter 1158 (B) is an ordinance that is not going to be enacted unless the ballot issue passes. Mr. Persanyi stated that Council is creating a new chapter and the people have no say. Mr. Majewski added that the Planning Commission will have no say at all. The Charter states that these zoning ordinances and zoning regulations must come to the Planning Commission before they are adopted. If the Planning Commission doesn't draw that line now, they will never see another zoning ordinance and the Charter will be violated everytime they pass a zoning ordinance.

Mr. Majewski suggested making a statement as the Planning Commission stating that Council needs to repeal these two ordinances now. The deadline for withdrawing the issue from the ballot has passed, but they don't need to count the votes. A recent example is the rezoning in

Fairview Park. The deadline was approaching for an issue about rezoning of an office building or condominiums. They simply said if they decide not to rezone the property and it appears on the ballot the votes wouldn't be counted.

Mr. Dzienny commented about the references made to the Master Plan as indicating that people want senior housing. The proposed development is being touted as luxury attached housing. Will these cost the amount of money a senior wants to pay to reduce their expenses so they can stay in Bay Village? This is going to be another \$225,000 and up development.

Mr. Persanyi stated that the Planning Commission cannot dictate the price of the attached residences, but he expressed agreement with Mr. Majewski that the procedure has to be followed. Fewer and fewer procedures are being followed and the Charter is being ignored.

Mr. Dzienny stated that there has to be a way to write Chapter 1158 to allow the granting of variances that make sense and without being targeted against one group of developers, or one historical site. Mr. Persanyi stated that Chapter 1158 should have been amended years ago before anyone came in with a proposal.

Mr. Majewski stated that the Master Plan pointed to Senior Housing. It was an idea to keep seniors in the city. If you look at the proposals the city has received over the years, since the Master Plan came out, and the most recent proposal, it is no longer senior housing. This current developer stated that he is trying to bring to the City of Bay Village a new demographic of people with a certain income level that desire a certain style of maintenance-free living. We have gotten away from the senior housing. When you look at the Chapter 1158 the Master Plan Committee created, there was a density bonus to developers if they would build with ADA compliant units. It was directed at senior housing. The charge was to find places in the city and find a method to build more senior housing. Mr. Majewski further noted that the taxes in the city are high. Many people leave because they can't afford the taxes on a fixed income. There are people moving in to take their place.

Ms. Lesny Fleming stated that she finds it troubling that the Planning Commission was asked to review this provision today and discuss the rezoning, and there is no one here from Council to present on the issue. It was expected that people would be here today to answer questions and to have dialogue.

Mr. Majewski stated that the moratorium is going to be voted on for a six month period. The Planning Commission would have that time to review Chapter 1158 for rewriting. Mr. Persanyi noted that if the rezoning passes on the ballot, the developer can claim the right to proceed.

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Mr. Persanyi commented that he does not have a problem with the proposed development of the Cahoon West property. The problem he has is that the process was totally wrong.

Mr. Majewski stated that one of the questions that was brought up at the Council meeting was if the acreage is being considered based on buildable area, or on gross area. Is that a fair way to determine density?

Mr. Persanyi noted that he does not see a problem with the riparian issues because the riparian setback ends up as being green space.

Further discussion followed.

Mr. Persanyi noted that the Zoning Code Review Committee that he was part of had the feeling that Bay Village is a community of single family residences and they were not going to disturb that by coming up with changes to Chapter 1158, because as Chapter 1158 stood that was not going to happen. Mr. Majewski noted that when you look at the history, that was what the city was designed to be. The people who moved here made investments in single family homes. You have to be very careful the way you change what is going to be built, where it is going to be built, how many are going to be built.

Mr. Persanyi noted that the proposed development is next to a commercially zoned area, and that attached residence districts should probably be adjacent to commercial development.

Discussion followed as to the action of Council in referring this matter to the Planning Commission this evening. Ms. Lesny Fleming said that it impacts what the Council would like to do this evening, and she would like to know how it reads. On September 9, 2013, Mr. Lee requested that the matter be referred to the Planning Commission. Ms. Lesny noted that if it has been referred, and the Planning Commission does not act on it, the non-acting is approval. Mr. Persanyi noted that this would occur after 60 days.

Mr. Majewski asked Ms. Lesny Fleming if it is clear when reading the Charter, Section 7.4, that the referral to the Planning Commission is to be made before the rezoning ordinance is adopted.

Mr. Dzienny noted that a revised version of Chapter 1158 is available to the Planning Commission for review.

Mr. Persanyi suggested writing to Council about following the procedure that is required by the Charter and the administrative code.

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Ms. Lesny Fleming stated that there has been no real request as to what is supposed to be done. No one is here to comment and present.

Mr. Dzienny will draft a letter to Council regarding the irregularities that have occurred. Ms. Lesny Fleming stated that the first point should be that it was not properly on the agenda this evening because it was not properly referred. The other issues about how this was handled would be the second point. It is also disappointing that no one is here to present.

Former Building Director Milburn will be asked if he still had his records from the Zoning Code Review Committee.

Mr. Dzienny noted that the Planning Commission discussed the procedure of what took place and is of the consensus that it was not properly referred to the Planning Commission; there was not a representative here to guide the Planning Commission on what to review, and the procedures followed to get this on the ballot did not include the Planning Commission. It should not be on the ballot unless it came through the Planning Commission. No one on the Planning Commission is particularly against the proposal, but it is the procedure and the targeting of a specific 2.349 piece of land.

Mr. Majewski asked about the proposal of the Bay Diner that recently received an extension of time for the Planning Commission to review. Mr. Dzienny noted that Bradley Bay has not proceeded with their building permit process.

Ms. Lesny Fleming stated that she attended the recent APA Planning Conference. Most of the material presented was high-level, strategic thinking of how a city should be planned. Ms. Lesny Fleming questioned whether there should be initiatives that the Planning Commission should be thinking of to present on its own.

Mr. Persanyi noted that homes are being replaced with larger homes, and possibly the Planning Commission should also start thinking about what should be happening on Dover Center Road. The Kent State group did a lot of studies on that which haven't gone anywhere.

Ms. Lesny Fleming commented on reading in the Council minutes about the Sharing the Road program with bicycles. She stated that it personally troubles her when we have signs that say Share the Road when Lake Road is so small. This is a safety issue. Mr. Persanyi related the history of the upgrading of Lake Road in the past by the State of Ohio, and the proposal of a bike lane. The public hearing resulted in protests from the residents on Lake Road.

Ms. Lesny Fleming read the role of the Planning Commission as it is spelled out in City Charter.

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Section 7.2. Mr. Dzienny noted that anything the Planning Commission does can be overridden by City Council. Mr. Majewski noted that one of the charges of the Master Plan was to give the Planning Commission more power. The first time the Planning Commission was overturned in the history of the city was the matter of the Bay Presbyterian Church parking lot, which did not meet the code.

Mr. Majewski will provide information to the Planning Commission through the secretary as to the path that should have been taken, according to the code. Former Building Director Milburn will be contacted for his notes from the Zoning Code Review in regard to Chapter 1158, and some of the recommendations that were made at the time. Mr. Dzienny will provide a draft of his letter to Council to the Planning Commission prior to its submittal to Council.

Mr. Majewski questioned the relevance of what the Planning Commission says now after the fact that the proposed rezoning is already on the ballot. Chapter 1158 (B) has been adopted; it is just not in effect yet.

Councilman Lee is recommending that the Planning Commission review Chapter 1158.

The service to the Planning Commission of Abe Bruckman was recognized by the Planning Commission. The Planning Commission expressed appreciation for those services and noted that Mr. Bruckman will be missed.

There being no further discussion, the meeting adjourned at 8:51 p.m.

Andy Dzienny, Chairman

Joan Kemper, Secretary