

City of Bay Village

Council Minutes, Committee Session
Conference Room
Paul Koomar, President of Council, Presiding

November 23, 2015
7:30 p.m.

Present: Clark, Henderson, Koomar, Lee, Lieske, Tadych, Vincent, Acting Mayor Ebert

Also Present: Councilman-elect Marty Mace, Finance Director Mahoney

AUDIENCE

The following audience members signed in this evening: Dick Majewski, Jeff Gallatin, Thomas Kramer, Lydia DeGeorge, Pam Cottam, Richard Fink, Suzanne Graham, Nancy Trainer, Conda Boyd, Mary Erin Schunick, John Suter, Alex and Karen Dade, Lawrence Kuh.

PLANNING, ZONING & PUBLIC GROUNDS & BUILDINGS COMMITTEE

Chapter 1158 Attached Residence District

Law Director Ebert advised that he passed out various court decisions related to Bradley Bay Nursing Home. One case went to Common Pleas Court and one to the Court of Appeals. All of the rulings of the Board of Zoning Appeals and the Planning Commission were upheld. The issue concerning expansion of the nursing home on contiguous property was permitted by Chapter 1141 (C). Contiguous property development was eliminated in 2005 by City Council, with the exception of schools and churches. Mr. Ebert stated that the construction of the nursing home expansion took as long as it did to begin because of an Ohio Environmental Protection Agency mandate regarding the retention basin, and the Ohio Department of Natural Resources ruling not to allow tree removal for the protection of a certain species of bats.

Mr. Koomar verified with Mr. Ebert that there is no development pending now that would not require a vote of the residents. Mr. Lee verified further with Mr. Ebert that there are no parcels that could be rezoned Attached Residence District without going to the voters. Mr. Ebert stated that this is correct, but churches and schools do have that option without a vote for land they own. Any additional land they purchase would have to be rezoned.

Mr. Dade commented that Bradley Bay Nursing Home applied to build after contiguous property development was eliminated. Mr. Ebert stated that the reason they were allowed to continue was that the Ohio Environmental Protection Agency discussions were underway at that time. The concern was the retention basin that was needed to prevent overflow in the area.

Mr. Henderson clarified that if Council were to pass Chapter 1158 as it stands on first reading, if anyone wanted to build the developer would have to seek rezoning and the people would have to approve at the ballot, both in the ward and city-wide, before Chapter 1158 would be used as the basis for development. Mr. Ebert agreed, stating that if it is going to be rezoned it has to go to the

ballot. Mr. Clark noted that this follows the same required voter approval protocol as the former Shell Gasoline Station property in 2005.

Mr. Henderson stated that in 2010 the voters approved Retail Business Districts to be a minimum development site of one acre and a density of eight units per acre. How does this relate to Chapter 1158 as proposed for no minimum acres and density up to ten units per acre? Would there be a conflict? Mr. Ebert stated that he would have to review, but the new ordinance would control. If Chapter 1158 would pass you would be allowed to change the density and minimum acreage. The rezoning was approved by the voters: the acreage and density is Councilmanic action. Mr. Lee asked if Clague Parkway as Retail Business District is included in that vote for rezoning. Mr. Ebert will review.

Mr. Tadych stated that behind Bay Presbyterian Church there is a roadway that has been turned into being used as part of the parking lot for the church. If the church were to decide to put housing on that area, would it be permitted without a vote of the people? Mr. Ebert will review.

Mr. Tadych commented that the infrastructure issue, specifically the stress on the sewers, when adding attached housing, did not come during the Planning and Zoning Committee meeting earlier this evening. Mrs. Lieske stated that the committee was focusing on applicability.

Mrs. Lieske questioned the timing of the ordinance with the survey results still pending. Mr. Koomar stated that the survey will be one of many tools to be used in this work. All three proposals for rezoning for attached residences have passed city-wide. People are saying that the five acre requirement is not applicable any longer. While Bay will remain a single-home town, there are opportunities to add options. Mrs. Lieske stated that people are comfortable with the retail business and commercial areas we are discussing, but the concerns expressed are related to residential neighborhoods. Minimum acreage would provide a safety valve.

Mr. Koomar stated that the voters deserve that Council vote on this ordinance and move forward. We can't spot zone this. Mr. Vincent stated that Paul LeBlanc spoke to Council on only one occasion. It might be helpful if he would return, or be available through a conference call, to answer the questions that have surfaced after additional review.

Mr. Henderson agreed with Ms. Boyd that the online version of Code 1121.47 does not define townhouses. Mr. Lee stated that the definitions should be included.

Mr. Tadych stated there are twelve Permanent Parcel Numbers on the west side of Clague Parkway owned by the State of Ohio. A thirteenth parcel is owned by CEI. If that area on the east side of Clague Road would be permitted to have attached residences, could the property on the other side be purchased from the state? Mr. Ebert said there have been discussions about that with the developer proposing a nursing facility there.

Mr. Clark suggested bringing in a developer to see if he would have any interest in developing attached residences. The Planning and Zoning Committee will seek a Bay developer who may be interested in providing input to Council.

Ms. Boyd stated that townhouses have not been defined before. If that is a new use, is it a new, permitted use? Mr. Cheatham stated that townhouses are defined in the state code, which follows the national code. Mr. Lee read the state definition of townhouse. Ms. Boyd stated that according to the Charter of the City, if you change the use it has to go to the voters. Mr. Evert stated it is not a changed use; it falls in with Attached Residence District with the idea it is more than one unit attached to one another. Mr. Vincent asked Mr. Ebert to review this question further.

In referencing the Master Plan in the ordinance, the specific area recommendations will be listed. Mr. Tadych suggested mentioning that some of the Master Plan recommendations are no longer suitable for reference.

Mr. Koomar stated that it really goes back to finding a transaction out there and having the area rezoned. Mr. Henderson asked the point then, of having Section 2. Applicability. Mr. Koomar stated that he doesn't want people to think it is limited to those areas. While we are encouraging those areas, even within some of those areas you are going to find landowners that may be willing and others that would never sell.

Mr. Vincent asked if the developer seeks rezoning first prior to presenting their development plan. Mr. Ebert stated that the developer has a better chance of getting something passed by the voters if they show a conceptual plan. Mr. Vincent asked if there be a legislative lever we can take to require them to show their plan first. Mr. Koomar noted the steps the developer took prior to getting rezoning for the Cahoon Ledges property, which turned out to be very favorable due to the effort he put into the education of the voters.

Ms. Boyd stated that the Retail Improvement Strategy is an important document and encouraged that it be placed on the City's website. Mr. Ebert will follow-up.

Mr. Koomar stated that he would like to have the most current version of the Applicability Section of the ordinance available for the Planning Commission to review.

Mr. Cheatham will coordinate the effort in finding a builder to address the Council regarding the drafting of the ordinance that will be feasible from a builder's standpoint. Mr. Cheatham will reach out to three or four builders from this vicinity to see if one will address Council.

Mr. Clark stated that before the committee composition changes, it would be nice to have a vote on this matter before the end of the year. He noted that Mr. Lee will be leaving the committee.

Mr. Koomar will get back to Council as soon as it is determined when Mr. LeBlanc can address the Council. He asked the Council to compile their questions so they can be sent to Mr. LeBlanc in advance of a meeting. Mr. Vincent stated that if there are any folks here that want to make suggestions that would be helpful also. Mrs. Lieske commented that the minutes of tonight's Planning, Zoning, Public Buildings and Grounds Committee meeting will have a number of questions and concerns that can be sent to Mr. LeBlanc.

ENVIRONMENT, SAFETY AND COMMUNITY SERVICES COMMITTEE

Review of Chapter 377, Bicycles

Mr. Lee stated that the bicycle ordinance was essentially rewritten in 2014. There was one issue that Mr. Tadych raised regarding the minimum age language that had been in the ordinance since the 1970's. It was not something that was changed when the ordinance was rewritten in 2014. There was discussion at that time about whether a minimum age requirement made sense, and if so should it vary from street to street. We have one age for the city as a whole, or as Mr. Tadych suggested, to have a higher age minimum for some of our busier streets.

Mr. Tadych read the language he proposes as follows:

“At no time shall a bicyclist under the age of seven operate a bicycle on a street unless accompanied by a parent or guardian. Riding with responsible supervisors on a roadway that either enters or exits the City, or on Wolf Road within the City, a bicyclist must be at least 12 years of age.” Mr. Lee stated that would suggest that an eight year old or seven year old could ride on Osborn Road. In looking at this in 2014, we noted that Rocky River and Westlake do not have any age requirements.

Nancy Brown commented that in Westlake you are not allowed to ride your bike across the street; you must dismount. We don't have that in Bay Village? Mr. Lee stated that one of the things we changed in 2014 was the language for crossing the intersection.

Chief Spaetzel stated that this matter came to his attention recently. When we revised the bicycle ordinance we suggested removing the age limitation and relying on parental responsibility and control as to what age a bicyclist should ride on the streets. The Chief stated this is not seen as a problem. Different ages for different streets would be problematic from a standpoint of enforcement. If the department sees anybody violating any law, they are stopped. Nothing as far as an age or roadway is going to change that. The department still has the ability, if they see a seven year old riding on the road not obeying the law they will be stopped and both the cyclist and parents advised. If it changed according to age and roadways, it becomes more problematic.

Mr. Koomar stated he would suggest removing the age.

Mr. Tadych stated that his problem is that a child who knows he cannot ride on a street might try. Mr. Kuh stated that it is unrealistic to legislate how a child might ride his bike in that manner. Mr. Ebert noted that you cannot legislate common sense. Mr. Kuh noted the educational efforts put forth through the Bike to School Challenge for both parents and students.

Mr. Lee, Mr. Vincent, Mr. Koomar, Mr. Clark, Mr. Henderson, Mrs. Lieske and Mr. Tadych would support removing the age entirely and relying on parental responsibility and control. Mr. Vincent asked if the City ordinance would be more strict or less strict than the state with the age limitation. Mr. Ebert stated it would be more strict. Mr. Vincent questioned whether a law that we cannot enforce exposes the City to liability.

Thomas Kramer stated he has been riding his bike across Bay since he was six or seven years old. He did not know there was an age restriction, and most kids would not know that either. He stated that no one wants to get hit by a bus, and he has always used common sense.

Mr. Kuh complimented the Police Department, stating that when we changed these ordinances to the new ordinances he has been told that the Police have been enforcing the ordinance, i.e., lights on bicycles at night. He is happy to learn that Council will remove the age reference because it is not an enforceable clause that would be of benefit.

PUBLIC IMPROVEMENTS, STREETS AND SANITARY SEWERS

Bruce/Russell/Douglas/Lake Road Sewer Improvement Project Update

Mr. Tadych stated that he was hoping that Public Safety/Service Director Thomas would be present this evening. Mr. Koomar asked that a memorandum sent by Mr. Thomas be included in the correspondence section of tonight's Special Meeting of Council, with the memorandum attached to the minutes of that meeting. The memorandum is an update from the Mayor on some of the improvements that are being reviewed. Engineering is taking place. There are about 120 residents affected, and only ten are on the email list that received the memorandum. Mr. Koomar noted that this is his way of getting the information out. Mr. Vincent suggested that the Mayor's Assistant be asked to place the memorandum on the City website as well.

FINANCE AND CLAIMS COMMITTEE

2016 Temporary Appropriation Ordinance

Mr. Clark stated that a Finance Committee meeting discussed having a temporary appropriation ordinance prepared for 2016, presenting it for three readings. Mr. Clark is supportive of preparing the ordinance for two months' time, based on the 2015 budget figures. Mrs. Mahoney stated that it only includes the operating portion of the budget, one transfer for Parks and Recreation, and no capital items. The ordinance will be placed on first reading on December 7, 2015.

RECREATION AND PARKS IMPROVEMENT COMMITTEE

Mr. Henderson is following up on the completion of the last exercise station at the T. Richard Martin Walking Trail in Cahoon Memorial Park.

SERVICES, UTILITIES AND EQUIPMENT COMMITTEE

Microphone Project

Mr. Vincent has received a quotation on the maintenance contract for the microphone purchase. The first year is covered by warranty, and for years two through five, the maintenance of the equipment is \$1700 per year for software updates and quarterly site visits. A service representative will be visiting the City Hall on December 2 for the first walk-through.

AUDIENCE

Lydia DeGeorge made the following comments about the feeling of the public in reference to Chapter 1158:

In reference to Mr. Koomar's comment about the survey and the Master Plan being a tool, that is true but even tools have priorities. Ms. DeGeorge stated that when she was at the presentation of Paul LeBlanc, the Mayor stated that she spoke to Mr. LeBlanc and the County and they all agreed that they didn't need the new Master Plan to go forward with Chapter 1158. The Mayor followed that up with a comment that "we can tweak it as we go along." Ms. DeGeorge stated that when comments like that are made it strikes fear in the hearts of residents that we are going to tweak things afterwards. We also impressed everyone that nothing can happen without a vote and there are some residents that mistrust that. Going to a vote should not absolve clarity in the ordinance, understanding, input and the desires of the public overall.

Mr. Koomar stated that usually with an ordinance you find ways of improving it, so when he hears those comments about tweaks he views them differently.

Pam Cottam stated that Mr. Koomar made a comment about clarifying Chapter 1158 so people would have a better idea of what it is. Mrs. Cottam received a survey and thought it interesting but one of the problems is that people were asked general questions such as "Do you think there should be senior housing?" "Do you believe we should have more economic development in certain areas?" The problem is it doesn't describe what that means, or where it is going to be. Whoever designed the survey made a very nice, very simple survey that is going to get initial reactions, but it makes a big difference whether you want economic development down the street from you or attached housing that might be multi-level. It is not that I don't want them, but not necessarily in my backyard. It was a positive survey but a real survey would ask more specific questions as to locations.

Mr. Dade noted that every rezoning issue that has failed has failed by the vote of the people that live near the area to be rezoned and did not want it. The perspective of the resident is much different when it is down the road.

Mr. Richard Fink stated that he appreciates Mr. Koomar's comment that Council can't determine what an acreage should be. But, the two fundamental problems with the table are that square footage is defined for a two family residence and the amount per dwelling for that residence which is a simple problem. With a complex problem there is no mistake in language. When you take this table with acreage, percentage and linear feet, I put it on the computer and I couldn't get back to what would work and what would not. Mr. Koomar stated this is a good point and we can address this with the meeting with Mr. LeBlanc. He noted how variables in setbacks can sway equations.

MISCELLANEOUS

Mr. Henderson reported on his attendance at the City of Avon Lake's Environmental Sub-Committee meeting. Avon Lake is getting close to receiving approval from the Ohio Department of Natural Resources (ODNR) to implement the next phase of their deer population management. Bay Village passed a resolution of support for the Avon Lake administration and the intent is this winter Avon Lake will be taking deer at the Walker Road Park which is adjacent to Ward 4 in Bay Village. Mr. Henderson will discuss this at his Ward 4 Meeting to be held Wednesday, December 2, at 7 p.m. at the Bradley Road Lodge. Mr. Henderson invited attendees from the public and media to attend. Police Chief Spaetzel will be in attendance at the meeting and will talk about some of the ways are safety forces will coordinate with the Avon Lake safety forces for the deer taking program.

Mr. Henderson stated that Mayor Sutherland previously agreed to send out letters to the neighbors and all the people that live adjacent to Walker Road Park. It is his understanding that this is till her intention. Mr. Henderson's ward meeting is meant to supplement that forward communication and give the residents a chance to ask questions of Mr. Henderson as a representative of Council and Chief Spaetzel as commander of the safety forces.

Mr. Lee asked if we can confirm that the letters will go in a timely manner. Mr. Henderson stated that as of today the ODNR has not given final approval but there are 15 dates Avon Lake has requested. Some of those dates are in December, and December 2 is in advance of the earliest proposed date, but not by much. It is possible that the ODNR or the United States Department of Agriculture (USDA) may require adjustment of proposed dates before they are advertised and the Avon Lake Councilman in charge of the program requested that we not socialize the dates until they are approved.

Mr. Vincent stated that he would prefer a text or email about something like this rather than a letter that could be overlooked.

A gentleman in the audience asked about the appropriate process and timing of vendor approval. He noted that this summer he had put a permit forth for approval from the Bay Soccer Club to operate a freestanding ice cream stand during the Bay Soccer Club Tournament. He seemed it died on Mr. Ebert's desk and he was denied the opportunity, so he is present tonight looking for answers.

Mr. Ebert stated that the Soccer Club controls that and it would be part of the approval by the Cahoon Memorial Park Trustees for the events. The Soccer Club would give that authority to the vendor applying to seek that approval. The gentleman stated that he did receive that approval and was told that he had to get Mr. Ebert's approval. He took the appropriate steps and did all the necessary paperwork. Mr. Ebert stated that normally the Soccer Club would advise who the vendors would be and it must be included on the application of the Soccer Club for approval by the Cahoon Memorial Park Trustees. The name of the vendor must actually be included in the approval requested by the Soccer Club when it is presented to the Cahoon Memorial Park Trustees. At locations other than Cahoon Memorial Park, the trustee's approval is not required.

There being no further discussion, the meeting adjourned at 9:12 p.m.

Committee Meeting of Council
November 23, 2015

Paul Koomar, President of Council

Joan Kemper, Clerk of Council