City of Bay Village
PLANNING, ZONING, PUBLIC GROUNDS AND BUILDINGS COMMITTEE
April 11, 2016
City Hall Conference Room 6:30 p.m.

Member Present: Councilwoman Karen Lieske, Chairman
Councilman Marty Mace
Councilman Paul Vincent

Others Present: Mayor Sutherland
President of Council Koomar
Councilman Dave Tadych
Councilman Marty Mace
Mr. Bob Lyons, Property Maintenance Inspector
John Cheatham, SAFEbuilt, Inc.,
Law Director Ebert

Audience: Dick Majewski, Lydia DeGeorge, Richard Fink, Kit Newell, 573 Humiston; Kevin Moriarity, 569 Humiston; Dave Semler, 26764 Russell; Denny Wendell, 451 Queenswood; Mark Chernisky, 23016 Lincolnshire; Michael and Julie Bauman, 556 Humiston, Cheryl Foerstner, 550 Humiston, Leslie Smith, 583 Humiston, Kristin DuPrey, 565 Humiston, Marty Walsh, 604 Humiston, 604 Humiston; Jenny and Chris Hartzell, 577 Humiston.

Mrs. Lieske called the meeting to order at 6:30 p.m. Mrs. Lieske welcomed the residents of Humiston Road in Bay Village to this meeting.

Mrs. Lieske thanked her Council colleagues, Law Director Ebert, and Chief Building Official Cheatham for their presence this evening,

Review of Codified Ordinance Chapter 1351 – Determination of Grade Lines

Law Director Ebert stated that Chapter 1351 – Determination of Grade Lines – has been redrafted. This will not deter any actions the City may have in resolving the issue that is before us, but will address any concerns the residents or the City may have in making sure grade is set properly. Tentatively on Board is another engineer to be contracted by the City to determine grade going forward. There is a stop order on the two remaining vacant lots on Humiston Road until the grade of the existing structure is resolved. Mr. Ebert explained that Polaris Engineering had submitted the engineering for the grade. CT Consultants has presented an analysis of Polaris Engineering report (Exhibit A attached). The main concern is if the City has any option going forward with these lots that are "grandfathered in" because they have a permanent parcel number. The City is looking at various options if something falls well below the minimum square footage that is now established by ordinance and the building of a home that will not have drainage on neighboring properties or flooding in the house being built. Nothing can happen on

the adjacent lots Nos. 9 and 11 on Humiston due to the issuance of a stop work order. Mr. Cheatham noted that the interior work on Lot No. 10 can go forward.

Mr. Tadych asked why all work is not being stopped. Mr. Ebert stated that the home is up. There is some accommodation that can happen with all three parcels for the drainage. The interior work is not affected.

Mr. Ebert discussed the possibility of penalties, ranging from minor misdemeanor to classified misdemeanor to be included in the redraft of the Chapter 1351. He noted that he has no problem increasing the penalty. Grade must be determined at the time the application is filed. We will not accept grade established by the engineer of the builder. The grade is going to have to be reviewed by the City's engineer. Mr. Ebert noted that there have been many homes demolished within the City and new homes being built on lots grandfathered in with their own permanent parcel numbers at the time they were established.

Mr. Koomar stated that current our ordinance requires the Director of Public Service to go out to do a visual inspection before the framing goes up. Mr. Ebert stated that he has to go out and look at the terrain. Mr. Cheatham stated that his understanding is that the Director of Public Service relied on the plans. Mr. Ebert stated that you cannot drain on others' property.

Mrs. Lieske stated that there have been received the results of the Community Survey. More than 60% of residents would like to see the new homes constructed to fit in with the existing character of the neighborhood.

Mr. Koomar stated that the home on Humiston is above grade. Looking at the draft that says we are going to rely on the engineer is how we got into trouble. Someone in the City has to be accountable. Mr. Koomar noted that he was on Council and part of the drafting of the original ordinance. It has worked fine until recent years, which tells him that it is more of an operational, personnel issue. We can put more teeth into the ordinance, but at the end of the day it seems like we relied on engineering plans and that is what has gotten us into trouble.

Mr. Vincent asked if the two neighboring vacant lots can be built on, considering the drainage issue. Mr. Ebert stated that if the engineers come back and say they can't, that is a whole different issue. Mr. Greytak has stated in his report that the grade of the swales on the south side of Sublot 9 and Sublot 11 is too flat to provide effective drainage which will probably result in ponding during much of the year. Because of the flat grades, it is also possible that the drainage from Sublot 9 will flow onto the lot to the south. The swale on the north part of Sublot 11 is too flat to effectively drain to the proposed yard drains. Sublots 9 and 10, and Sublots 10 and 11 share drainage in the side yards and therefore are not containing drainage within the individual lots. Sublot 10 drains into Sublot 11 along the common side yard. There is insufficient grade shown for the lots surrounding the common development to determine if offsite drainage is flowing onto the common development from the south and west. The rim elevation on the rear yard drains is undetermined since the elevation is labeled +or-. Given that there is about 12 inches of cover indicated over the storm drains, the rim elevation is critical to assure proper drainage. There are no elevations given for the storm or sanitary sewer in the street, so it is

impossible to determine if the sanitary and storm sewer laterals are at the proper elevation. No invert elevations are given for any of the laterals. It is not clear what is being used as a bench mark. What is the source of the contours and spot grades? Were these generated from a field survey performed by Polaris? For information only: the house on Sublot 11 will have an exposed basement wall of 4 feet or more.

Mr. Vincent stated that the draft of Section 1351.04 states that the builder's engineer shall certify that the grade complies. Mr. Ebert stated that he will change that section to state that it will be the City's engineer to certify that the grade complies. The idea is that once the grade is established inspections will occur, especially when the footer is being poured. Mr. Cheatham noted that he wants the inspection and certification done even before they pour the footer.

Mr. Vincent asked if there is any protocol on the decision when to bulldoze. In this circumstance the whole house is there. Mr. Koomar noted that if we went out before any framing started and the Director of Public Service looked at it and said the grade is too high, what would have been the procedure then? Mr. Ebert stated that the City would have it removed through an abatement notice or court order. Mrs. Lieske asked if it is possible to issue a stop order now for any further construction, including the interior. Mr. Ebert stated that they cannot get an occupancy permit; they cannot construct sidewalks or driveway, or do any landscaping on the exterior. Mrs. Lieske stated that the builder keeps progressing. Mr. Ebert stated that Mr. Cheatham does have the ability to put a stop work order until everything is resolved. Mr. Cheatham stated that he knows this builder has investors and they push him for quick turn-arounds and he thought that getting it done inside wouldn't make any difference to the City one way or another when he is not being permitted to pour sidewalks or driveway. Mr. Koomar noted that the stop order would get his attention.

Mrs. Lieske commented that the lack of a sidewalk is a big issue. Mr. Ebert stated that until the grade is set the elevation of the sidewalk is in question. Mrs. Lieske asked what the risk to the City would be if we put a stop to construction altogether. Mr. Cheatham stated that he is not trying to say too much publicly, but he does know if we put a stop order on the entire thing we will be involved in a law suit immediately, as quickly as they can file.

Mr. Vincent asked the City's policy on not issuing further permits to builders who have been a problem. Mr. Ebert stated that the City can deny a permit and does not have to accept the application if the builder has a history of court cases or violations. Mr. Vincent suggested being mindful of that.

Mr. Vincent asked if the City has decided to charge the builder with a minor misdemeanor. Mr. Ebert stated that once the report comes back, if he does not comply, it will be enforced. We have not taken him to court yet. Mr. Vincent noted that the builder intentionally ignored the City's ordinance.

**AUDIENCE COMMENTS**

Mark Chernisky, 23016 Lincolnshire, stated that his property is right behind the property in question. He asked if it has been determined by the City how much lower the grade should be. Mr. Lyons stated that this will be determined by Mr. Greytak. Mr. Chernisky noted that based on what was on the property previously it would seem to be at least 16 inches too high. Mr. Cheatham stated it is closer to two feet too high. Mr. Chernisky suggested that if he be informed to lower the garage floor that would lower all the grade.

Leslie Smith, 583 Humiston, directly across from the property, asked if the City is going to allow the builder to build the other two houses at this grade, and if not, how will he ever have drainage if they are not all the same. Ms. Smith asked what the location of the retaining walls will be. The yard space between the houses is 6 feet. Will he be held to that? Will that include retaining walls? Are you going to actually stay on him this time and make him do what he is supposed to do according to code?

Mr. Cheatham stated that this is why they are working on a new City ordinance to have the City Engineer check the grade before the footers are poured. The builder is not allowed to go forward until the City Engineer has approved a plan for all three lots. There is a question presently whether he will be able to build on the other lots. The retaining walls for the house he has built so far will be within the property lines of that house.

Mrs. Lieske asked if someone goes by regularly to be sure that nothing is being done that should not be. Mr. Cheatham stated that typically when anything is under construction they go when an inspection is called in. He said he can send an inspector to check this particular property daily to make sure nothing is being done outside or on the other properties.

Mr. Koomar asked if the garage floor can be lowered. Mr. Cheatham stated that it can be lowered if the footers are close to the wall. He stated that he brought that up to the builder and he was adamantly opposed to it. Mr. Cheatham stated that he cannot force him to lower the floor. That would have to be a court order. Mr. Cheatham stated he can only enforce the ordinance and the way the ordinance is right now is that as long as the water stays on your property, you are legal. Mr. Koomar stated that the approval process in the ordinance is that the City can set the grade wherever they want. Mr. Ebert stated that you have to incorporate the water retention clause with the maintenance of the neighboring terrain.

Denny Wendell, 451 Queenswood, asked if there is a height restriction. Mr. Ebert stated that there is a height restriction. Mr. Wendell stated that if you lower the grade, the house will be taller. Mr. Ebert stated that the height is measured from the average grade on the property. The house has to be 35 feet from the grade level. Mr. Cheatham stated that lowering the grade is creating another problem with this home, but it would probably be a lesser problem which could be resolved with a variance on the height of the home.

Mr. Chernisky asked if lowering the garage floor would be a viable solution, would the City be able to enforce that as a solution to this grade problem with this home. Mr. Ebert stated that it would depend on the report of the engineer. If the engineer agrees, it could be enforced but there would probably be costs incurred by litigation.

Mr. Vincent asked if enforcement is insured by denying the Certificate of Occupancy until the grade meets the code. Mr. Ebert stated it would hold up the sale of the house. Mr. Tadych noted that neighboring residents on Lake Road in a similar situation did not like the vacant home.

Kevin Moriarity, 569 Humiston, stated that none of the neighbors want to see a shell of a home there for ten years. Is there an option for the prospective buyer to buy both lots? Mr. Ebert stated that it may not be affordable for a prospective buyer.

A Humiston Road resident stated that she is confused as to how someone saw the foundation before the framing was up and enforcement to code did not occur at that point in time. Mr. Cheatham reiterated his previous explanation that he is certified by the state to enforce the codes. In the state code, in Chapter 1, in how to administer a building department, that in any case where there is non-conformance with the code, when they consider what has to be done to bring it into compliance, they must look at the technical feasibility to abate and the economic impact. Mr. Cheatham stated that it would be about $45,000 to tear it out and rebuild it. Mr. Cheatham stated he cannot require them to do something that expensive if there is a lesser way to fix it.

The resident stated that someone should have done something then, before the framing went up.

Mr. Cheatham stated that there was no reason to stop the framing from his standpoint because he knew he could not make them tear out the foundation. The resident asked how Mr. Cheatham is making that judgement. Mr. Cheatham answered that he is making that judgement based on 18 years in the Building Department and twenty years as a builder. Tearing out a foundation is basically unheard of.

The resident stated that this is a large problem in Bay Village, and it should have been stopped at that point. Mr. Cheatham stated that if it ever happened again he would stop it immediately. But, based on his years of experience it did not make sense to stop it knowing that he could not make him tear out the foundation and knowing that while it was going up they could be working on the grading plan.

Mayor Sutherland stated that there is basically is a loophole in the ordinance that this particular builder took advantage of. We are going to close the loophole, but the bigger problem is the two other lots. When landscaping is done, and when it is graded properly, it is not perfect but is probably something everyone can live with. But, if those other two lots are built upon, that is really the big critical problem and we are going to do whatever we can to stop that. I don't know if we are going to be successful, but we are going to try our hardest.

A resident stated that if identical homes are built on Lots 9 and 11, you will have homes closer than cluster homes in Bay Village.

A resident asked if there are proportionalities, square footage to lot size. If there isn't shouldn't there be? And, can we not expand the Architectural Board of Review to look at residential, not just commercial? Perhaps, also, we need more personnel in the Building Department. There are other cities that require more acreage for a house, and we could require proportionality of square

footage to lots. Especially the way these homes are going up; too big for the lot size, it looks ridiculous in the neighborhoods.

Mayor Sutherland stated that she wrote the ordinance for the Architectural Board of Review when she was on Council, but it only applied to commercial. They tried to get it to apply to residential but could not get it through Council at the time because they did not want to interfere with individual property rights. It would have to be done through City Council and with the guidance of a professional to help with design guidelines.

Lydia DeGeorge commented that Mr. Fink stated at the April 4, Planning and Zoning Committee meeting that it is true that the law says you have to look at comparative economics, but if you willfully violate that law, which I think this builder did because he had already been sued for the same thing, that obviates anything and the economic protectors are gone. Ms. DeGeorge asked if the committee has had a chance to look into that because it could change the scope of what is going on with this house now, and possibly going forward.

Mr. Ebert stated that the case with the other home that was in litigation, with the same builder, the circumstances were different and had to do with swales. Mr. Ebert stated that he will review the suggestion of Ms. DeGeorge.

Mr. Koomar suggested that another Planning and Zoning Committee be held in the near future to keep reviewing Chapter 1351.

Mr. Vincent asked about putting in a requirement in the ordinance that if the builder should violate the code the City would immediately put a stop order into effect and the Building Director and Law Director decide what to do next.

Mr. Cheatham stated that the Residential Code of Ohio states that any time a City drafts an ordinance or resolution that is in conflict or potentially in conflict with the code it has to be sent to Columbus to the RCAC for determination if it can be adopted or enforced.

Mr. Vincent confirmed with the Law Director that since Bay Village is a Charter City they can be more restrictive than state code.

Mr. Ebert noted that the City must be very careful with drafting building code and issuing building permits to not violate the rights of property owners. But, what will have to happen on the three lots on Humiston is to address the drainage and the topography.

Mr. Chernisky asked if a foundation poured today on Wolf Road was checked by the Building Department.

A resident asked if the storm drains can handle three more homes on the properties on Humiston. Mr. Ebert stated that this will be part of the City's Consulting Engineer report. Mr. Ebert stated that his report is to address all three lots.

Mr. Mace asked if part of the solution would be to use parts of the other vacant lots. Mr. Ebert stated that they will be part of the solution and the City will make sure it is resolved to the satisfaction of the City and the Building Department.

Mr. Ebert stated that a letter or email will be sent to the residents who signed in this evening to keep them informed. Mr. Lyons noted that the builder must keep the drainage of water on his lot. One of the findings of the Consulting Engineer was that this cannot be done with Lot No. 10, and even though he owns Lots Nos. 9 and 11 also, he cannot drain his water to those lots.

Mayor Sutherland requested that Mr. Ebert find a way that those other lots cannot be built upon.

Mr. Vincent stated that he would like to know the process when someone turns in their initial engineer plans. Mr. Tadych asked if the plans of this particular builder left the Building Department to go to the Service Department. Mr. Lyons stated that they did not.

The meeting adjourned at 7:42 p.m. The committee will meet again on Monday, April 18, 2016 at 6:30 p.m. Mrs. Lieske thanked everyone for their attendance, and stated that she will be happy to stay in touch with a spokesperson for the residents, or all of the residents who have attended this meeting.

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Karen Lieske, Chairman Joan Kemper, Secretary