

Minutes of a Meeting
of the
City of Bay Village Planning Commission
Held October 1, 2012

Present: Bruckman, Dzienny, Fleming, Maddux, Majewski, Miller, Persanyi

Also Present: Mayor Sutherland, Law Director Ebert, Building Director Galli, Commercial Projects Coordinator Milburn, John O'Neill Sr., John O'Neill, Gary Werner, attorney for Mr. O'Neill, Ken Martin, architect for Mr. O'Neill, Attorney Gerald Phillips, Councilman Tadych, Councilman Young

Audience: Bruce Geiselman, Karen Dade, Shirley Tomasello, Nancy Dzienny, Nancy and John Black

Chairman Dzienny called the meeting to order at 6:30 p.m. in the conference room of Bay Village City Hall. Following the roll call, Mr. Dzienny thanked everyone for adjusting their schedules to accommodate the change of meeting date and time. He explained that he will be out of the city on Wednesday, October 3, the regular meeting date, and feels that a full representation of the commission needs to be present to consider the request of Bradley Bay Health Center for an expansion of their facilities.

Motion by Persanyi, second by Majewski, to approve the minutes of the meeting held September 5, 2012. Motion passed 7-0.

**Bradley Bay Health Center
605 Bradley Road
Expansion of Facilities**

Mr. John O'Neill, representing Bradley Bay Health Center, stated that they are proceeding with their application for expansion of facilities and have submitted all the necessary documentation including the plans and information for drainage and signage. They have been to the Board of Zoning Appeals to seek a variance for an additional sign for the roadway, as well as two signs within the property and have received additional approval for the use and a use variance. The Architectural Board of Review has approved the project and Mr. O'Neill is here today for a final vote on the project.

Gary Werner, of Berns, Ockner and Greenberger, LLC, and Ken Martin, architect for the Bradley Bay Health Center project were introduced by Mr. O'Neill.

Mr. Dzienny called upon the members of the Planning Commission for comments.

Mr. Majewski stated that he had one call from a resident who left a voice mail message. Mr. Majewski asked Building Director Galli to address the sanitary sewer capacity and its ability to handle the addition.

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Mr. Galli stated that the sanitary sewer was addressed in the plans and there are no concerns from the Service Department. Mr. Miller addressed Mr. Galli and stated that as typical there is a clear water protection plan as part of the building application review, or building document review with hydraulics, outflows and equipment to the system, whether it is a contained system. Mr. Galli expressed agreement.

A member of the audience asked if anyone can make a comment. He was informed that the meeting this evening is not a public hearing.

Mr. Dzienny stated that the Planning Commission has been through the process, as Mr. O'Neill has said. In the very beginning, before the process started, the commission asked that the application be sent to the Board of Zoning Appeals, because the application could not even start without the proper zoning. A pre-meeting of the Planning Commission was held to discuss the legality of the project, and the members of the commission were assured by the Law Director that it was legal to move forward with this application. The Planning Commission went through Codified Ordinance Chapter 1129, got all the pieces and parts that were asked for by that code. Additional items were asked for and Mr. O'Neill provided those. The application was forwarded on to the Board of Zoning Appeals for additional variances, and referred to the Architectural Board of Review for recommendations. The applicant received their variances and direction from the Architectural Board of Review. A public hearing was held with minimal participation. The application is now back before the Planning Commission for a final vote.

Mr. Dzienny asked if there are any conditions, or anything additional that the Planning Commission wants to put into motion.

Mr. Persanyi asked Law Director Ebert if there was a use variance granted in all of the previous expansions of this facility.

Mr. Ebert stated that the ordinance that allowed the expansion on contiguous property was changed in 2005.

Mr. Persanyi stated that the charter amendment that came in 1974 would have negated that part of the ordinance in Section 1141. The charter amendment occurred in 1974 concerning change of use or change of zoning. Change of zoning has to be approved by the voters. Part of that charter amendment also said that any ordinance contrary to that would be null and void.

Mr. Ebert stated that he cannot respond to Mr. Persanyi's comments without an opportunity to look at the 1974 charter amendment.

Mr. Milburn stated that there was never a change of use there. That property was always First Residence District, and Attached Residence District, as it always has been. It has never been changed, zoning-wise.

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Mr. Persanyi stated that the change of use was the fact that it was a nursing home. There was a change of use from First Residence District.

Mr. Ebert stated that there was a case that actually talked about nursing homes/hospitals back then. That was the case that actually put nursing homes in the same classification as a hospital. Mr. Milburn added that hospitals were permitted in the First Residence District.

Mr. Ebert stated that it was a case that actually determined that a hospital is the same as a quasi-nursing home. They are classified the same. Normally, cities do not have a classification of nursing homes, unless they have a number of them and they are trying to control zoning. The first time that came into effect was when Bayview Hospital was in existence, where Cashelmarra is now located. That was the interpretation that was brought back then, as far as whether a nursing home had the same classification as a hospital. Mr. Ebert stated that he does remember this, but cannot go into details without looking at the charter amendment Mr. Persanyi is talking about.

Mr. Persanyi stated that it is the charter amendment that pertained to a change of zoning or change of use has to be voted on by the people.

Mr. Ebert stated that Bradley Bay is in First Residence District where it is now. The only issue that came up was that in 2005, the ordinance was changed to take out contiguous property during that period of time, which Mr. Ebert indicated in his memorandum, had to go to the Board of Zoning Appeals and meet the criteria of the Board of Zoning Appeals test in order to go forward as a conditional use/permit. Regardless of what Mr. Phillips wants to say, that is what the case law indicated, and that was substantiated by the 2005 and 2006 cases by the Court of Appeals.

Mr. Persanyi asked Mr. Ebert if he is saying this is the only time they would have needed a use variance.

Mr. Dzienny stated that according to Chapter 1129.01 (d) (6), the Planning Commission is at the point where they can vote on this to approve, disapprove, or approve conditionally, the application of Bradley Bay Health Center for expansion of their facilities. Mr. Dzienny asked if there are conditions the Planning Commission wants to put on the project, above and beyond what the Architectural Board of Review has asked. Mr. Dzienny asked if there is anything the Planning Commission wants to discuss regarding conditions.

Mr. Majewski asked about the requirement of the Building Department that the lots be consolidated into one lot.

Mr. Milburn stated that before a building permit is issued, lot consolidation must have taken place and be filed with the Cuyahoga County Recorder. Mr. O'Neill acknowledged this requirement.

Mr. Werner stated that the consolidation of the lots was a condition imposed by the Board of Zoning Appeals when they granted the variance.

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Mr. Majewski stated that in 2005, or when the project was last passed, there was a time period for the consolidation set by the Planning Commission. It was a 45 day time period.

Mr. O'Neill stated that his intention is, after he obtains approval and prior to submission for the building permit, he will send in a lot consolidation.

Mr. Milburn asked if 45 days will be sufficient time.

Mr. O'Neill responded affirmatively.

Mr. Dzienny stated that the one condition he would like to discuss is that the property at the end of Crestview Drive was never intended to be an expansion of Bradley Bay. Mr. O'Neill indicated that if he were to build on that, it would be residential homes similar to what is on the street.

Mr. O'Neill stated that Mr. Dzienny's statement is correct.

Mr. Dzienny asked for further discussion or requests for conditions.

Mr. Werner asked if the condition for the lot consolidation would be that the application would be submitted within a 45-day period. Mr. Dzienny acknowledged that a consolidation takes longer than 45 days.

Mr. Majewski asked if the fact that the property at the end of Crestview Drive is never to be used for further expansion is going to be designated on a map somewhere and dated.

Mr. O'Neill stated that the property to the south of the nursing home, known as 591 Crestview, will be split into parcels, one that is to the western end of the parcel with frontage on Bradley Road and is zoned Attached Residence; the rear of the property is First Residence District and a portion of that parcel is what is being talked about. The property is a long rectangle and the easterly portion of it is zoned First Residence District. That is the section that will not be built for Bradley Bay. Mr. Dzienny asked if it is being split so that the property line will follow to the south.

Mr. Majewski asked if Mr. O'Neill is talking about the lot known as the old Sterkel property and he is going to split it where the attached residence zoning ends, at the east it will be First Residence District. Mr. O'Neill responded affirmatively. Mr. Majewski asked that this be delineated somewhere on a map. Mr. O'Neill stated that it was delineated when it was rezoned. There was a line on the drawing.

Mr. Martin stated that this is shown on their plans on Drawing No. 2 and is described a 440 foot long piece of property that is 169 feet wide that is dead-ended by Crestview Drive.

Mr. Ebert recommended that Building Director Galli note this on the maps of the city in the Engineering Department. This would be the proper place for identification.

Mr. Bruckman expressed appreciation to Law Director Ebert for succinctly outlining the points of the legal analysis. He also thanked the attorneys representing both sides. This was absorbing reading and is a deeply felt issue. After taking a lot of time to carefully read all of the legal opinions, it actually helped provide clarification. Mr. Bruckman noted that he wanted to express this before the commission votes.

Mr. Ebert thanked Mr. Bruckman for his comments.

Motion by **Miller**, second by Bruckman, to approve the application of Bradley Bay Health Center, located at 605 Bradley Road, for the expansion of the facility with the following conditions:

1. Bradley Bay Health Center shall submit an application for consolidation of the properties denoted by their application package within 45 days of any approval;
2. The property that is at the dead-end of Crestview Drive, currently zoned R1, in the future will not be developed by the applicant or the owner of the property for anything other than what it is currently zoned, and that the Building Department will delineate that property on the zoning maps as stated.

Roll Call Vote:

Yeas – Dzienny, Bruckman, Fleming, Maddux, Miller

Nays – Majewski

Abstained – Persanyi

Motion passed 5-1-and one abstention

Karen Dade addressed the Planning Commission, stating that she does not know how these people live with themselves. They said in 2005 that this wasn't going to happen again, and what they just said will not stand. They will build again. They are doing it now and they are going to do it again. Mark my words.

Council Update

Mr. Miller stated that he hopes everyone will attend the public forum of the Charter Review Commission being held this evening in the Council Chambers. The Charter Review Commission is composed of nine residents of the city, of which Mr. Miller was one, that met from March through July to establish potential amendments to the charter. All residents should have now received a pamphlet from the city and potentially from the Fire Department and Police Department, regarding these four issues. The Charter Review Commission will be discussing those proposed amendments this evening. The Charter Review Commission voted unanimously that all of these amendments occur and they are projections for future opportunities. Part of the

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charge of the commission is to look ahead, and also look behind at our history, to see what we have done and see if we can improve upon our charter in any way.

During tonight's Council session, the Council is going to be motioning a solar energy system ordinance. It is hoped to have support for that from Council over the next few readings to further craft the ordinance. The ordinance was first brought to the attention of Council through an opportunity presented by the students of Baldwin Wallace University's sustainability capstone class looking for a pilot community to assist with developing a sustainable energy ordinance. Of the two they brought, one solar energy, and one wind energy, the Council decided to go with solar. It was not as easy a process as originally imagined, but a lot of input has been received from many different groups. The Bay Village Green Team, professionals, and contractors have helped the committee understand how these system works. The committee worked with the Fire Department to further develop the ordinance and this evening the ordinance will go on first reading.

The tennis courts are being renovated, getting down to the base material and starting fresh. The patches that have occurred over the past ten years are not withstanding. The money will be spent now to improve the facility. Along with the improvement will be new LED lighting which will reduce energy costs over the long term.

Mr. Persanyi asked if both systems, Photovoltaic and heat systems of solar energy are being addressed. Mr. Miller stated that it is only for the Photovoltaic Solar Energy System. It is not a passive capture or active capture type; it is not for thermal.

Mr. Majewski asked about an issue with the Bayway Cabin discussed at a meeting of the Cahoon Memorial Park Trustees recently. He asked Mr. Miller for further information, noting that he does not quite understand what took place.

Mr. Miller stated that the tenant in the Bayway Cabin, Kiddie Kollege, had planned previously to put in a piece of play equipment. It did not come to the trustees before it was installed. The question was would the trustees even approve the installation. After the fact, the tenant came with the question to be able to be install the unit. The resulting vote was 4 for the positive, and 3 for the negative. There is still an outstanding question as to whether or not the majority, if someone were to abstain from the vote, was to go with the majority or not. We haven't had that determination yet. As far as a general vote, it was to the positive to retain the system.

Mr. Maddux asked why the committee did not consider wind energy. Mr. Miller stated that what they learned was that the most efficient area of breeze is about 60 feet above ground. Most of the trees in the city run about that same height. If you were trying to get above that to be efficient would require fairly tall towers. The City of Avon Lake has already included that in one of their ordinances, but they also have acreage requirements and fall conditions. Even though some of the technology of the towers permit the towers to collapse upon themselves, it would be difficult and time consuming for the committee to understand all of this. The committee felt that the low-hanging fruit was solar energy. They have not abandoned wind, but have not latched on to it yet.

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Mr. Persanyi noted that abstention does not go with the majority vote. If there is a full house, an abstention is not a vote; in essence, it does not go with the majority. Mr. Persanyi stated that he researched that today, specifically.

Mr. Majewski asked that the minutes reflect receipt of a letter from M. Susan Murnane, 30509 Willoway Lane, dated September 26, 2012, stating that she will be out of town on October 1, 2012, but would like to express opposition to the application for expansion of Bradley Bay Health Center as presently proposed. Ms. Murnane expresses concern about adding additional stormwater to Porter Creek. Mr. Dzienny stated that he believes Bradley Bay Health Center has done a good job of creating the retention pond and holding the water on the land until it is put in the creek properly.

Mr. Majewski noted that the memorandum from the Service Department indicates acceptance of that plan.

Mr. Bruckman stated that he meant it quite sincerely when he said this work was ultimately worth it. There were salient points that attorneys from both sides of the issue brought up. Mr. Bruckman stated that he made his decision based on his personal feelings, but more so than that, what he read in terms of case law, and his understanding of the responsibilities of all of the members of the Planning Commission. He stated that he believes it is a testimony to the integrity of the group that they took this length of time to deeply probe the nature of their roles and responsibilities. There are some fine points, in terms of case law, that were made that might help in the long run, for a peaceful dialogue about the nature of what has transpired. The law is the law in any regards, and whether we like it or not, we are not attorneys and we have to be careful when we cite case law. There are some interesting points that are worth bringing up as part of the public dialogue. This is something we might want to do; even if we have a chance to do it informally after this. It is an important part of the civic process that we have that dialogue, and continue to have that dialogue regardless which side of this particular issue a member falls on. It is part of the process.

Meeting adjourned at 7:08 p.m.

Andy Dzienny, Chairman

Joan Kemper, Secretary