

Minutes of a Public Hearing and Meeting of
City of Bay Village Planning Commission
Held January 6, 2020
7:30 p.m.

Present: Jeff Foster, Warren Remein, Rick Kirk, Sara Byrnes Maier, Kendra Davitt, Jennifer Lesny Fleming and Dave Maddux

Also Present: Eric Tuck-Macalla (Building Director), Mark Barbour (Law Director), Lauren Oley (Assistant to Building Director), Lydia DeGeorge (Councilwoman), Don Bierut (City Engineer),

Audience: Becky Olson, Benjy Manning, Beth Stehlik, Carolyn Creech, Cheryl, Christy Gray, Conni, Dianne Maybaum, Eddy Pavicic, Susan Michels, Jan Maziasz, Jenny H, Joanna Post, John Ross, Kate Terrell, Kathryn Boehnlein, Kevin Hoffman, Marcia, Marlene, Matt Viola, Mark Wyant, Mike Gesing, Noelle Sayles, Patrick McGannon, Peter Winzig, Robert Petkash, Sutherland

**Full recording of the meeting is permanently available on the City of Bay Village website under Government/Planning Commission/View Most Recent Agendas and Minutes/Media*

PUBLIC HEARING

Property Address: 560 Forestview Road Parcel#20405007

Owner: Red Oak Investment Partners, LLC

Engineer: Polaris Engineering

Red Oak Lane Subdivision- Approval to split the lot 204-05-007 into four separate sections. Chapter 1111- (Subdivision Design Standards)-(b) Location. All lots shall front and abut at the right-of-way lines by their full continuous frontage

Mr. Foster called the Public Hearing to order at 7:30 p.m. He introduced the item on the agenda - the proposed approval of a lot split at 560 Forestview Rd. into four separate sections. He then requested Mr. Barbour run through the item on the docket.

Mr. Barbour advised that this is an application to subdivide an existing piece of property that currently fronts Forestview to create three additional parcels. One parcel is an extension of Red Oak Lane that would be necessary to give the other two parcels, which would be created, frontage on a public right of way which is what is required to create a lot in Bay Village. The issue in front of planning commission is whether the applicant meets the requirements to have this property

divided into those three lots. One lot would have an address on Forestview and the other two lots would have addresses on Red Oak Lane and the fourth parcel is actually the roadway which is about approximately 85' in length. That is what the planning commission is considering for tonight. Although a public meeting is not a requirement under the code they have the ability to call one to ensure that members of the public have adequate opportunity to ask questions and raise any concerns they may have. He went on to introduced himself as the Law director and advised that the City Engineer and applicant are all on the call so hopefully all questions can be addressed. He advised that he thinks this is the 3rd or 4th time this final plat being reviewed and there was a preliminary plat that was ruled upon earlier in 2020.

Mr. Foster thanked Mr. Barbour for his comments and remarked that this project has been presented a few times so he did not ask the applicant to present it again as he doesn't believe there have been any changes.

Mr. Hoffman confirmed that there have been no changes.

Mr. Robert Petkash introduced himself and advised he lives on Red Oak Lane. In July of 2020, he sent a letter to the planning commission, city council, the mayor, Mr. Barbour, along with signatures of 40 residents in the area objecting to the project. He is sure that had he gone further in the neighborhood he'd be able to secure many more signatures – objecting to the procedure of the project. He wonders if there has been any consideration at all for what the public thinks about this project. These things are supposed to be done for the public welfare and, based on what he found, this is not public welfare. He would like to raise this question, why we have been proceeding with any more discussion when there is so much resistance to this project.

Mr. Barbour advised that he will address this question and if any planning commission members want to address it they can as well. The mere fact of public opposition, under our ordinances, is not enough by itself to turn down an applicant - if the application otherwise meets all the requirements of our code and the planning commission finds that the application fits with the neighborhood/area to be effected. The reason we have public meeting and public comment is to make sure that everyone knows what is going to happen and then to also give the public an opportunity to raise any issues that the city, planning commission, or applicant may not be aware of/or that can be corrected in the plan. He went on to say that in the time that he served on Planning Commission when they would have public comment it was not unheard of for the applicant to make a change to what they were going to do based on comments that they received or that the planning commission can explore that further. In those instance that involved, for example construction of the bay creek condominiums, where some design elements could be changed. Each project is a little different and each application is different. If the applicant is making a legal application, the planning commission finds that to be the case, what is being applied for fits in with the area that is involved those are important considerations and the main considerations. The way

the codes are written the objection by parties are not enough to prevent an otherwise legal action on the part of the commission.

Mr. Petkash remarked that many of the ordinances have statements about things proceeding when it is the best interest of the public and public welfare. He has expressed that this is not in the public's interest and you still continue to go on with the project. We in the neighborhood don't want it. We like the woods the way they are. To proceed with this just for one guy to make a few bucks that is not justification and it isn't the right thing to do. The expression to the planning commission was that they shouldn't even bother. Why go through all this trouble when we, in the neighborhood, the taxpayers, and the voters, don't want it.

Mr. Foster remarked that he would comment on behalf the board. All of the comments have been taken to heart. They do not take any of them lightly and the level of scrutiny that this application has gotten is somewhat unprecedented. A lot of projects have been done with a lot less examination. He referenced the fact that Mr. Barbour touched on - this is a legal project. It is private property that someone has come to us with a request to subdivide the property and they legally have provided three separate parcels and a right of way that meets with all of our codes. There are no variances that are required. We, as a board, have spent an inordinate amount of time reviewing this. They have taken everyone's comments to heart, but unfortunately as a board, the fact that someone may not like what their neighbor does – does not take away his legal right to use his property. To go along the lines of what Mr. Barbour mentioned, about what this board does. When this board reviews properties, we review them for consistency. Consistency would be – are the neighboring properties consistent with what the applicant is proposing to do? Is it consistent with the planning doctrine/guidelines within the city? Does it fit with all the necessary ordinances? Are there any technical requirements or hardships that need to be met? The resident mentioned about Public welfare – are there any health, safety, welfare issues that would demise from this? Mr. Foster believes that they have spent a lot of time looking at the creek and the applicant has provided us a lot information about what the impact to the creek and drainage would be. Mr. Bierut, our City Engineer, has reviewed that as has our Building Commissioner. Mr. Foster pointed out that the planning commission questions their judgements all the time and we challenge them and we have all along to make sure that whet an applicant brings forward is done in good faith and that it is also done accurately, professionally, and correctly. There are a few more technical steps that this applicant needs to go through on the engineering side, but as we review the application that is before us – which is dividing that property consistently with what the properties are around them - the grounds to just deny it because we just don't want to see it or 40 or 400 people come to us and say 'we don't want it'. The board will have a hard time doing that. Which is why we are hearing this case.

Mr. Petkash remarked that it still doesn't make sense, but he will continue to listen to the arguments.

Mark Wyant introduced himself as a resident of Forestview, almost directly across from the lot in question and next door to a house that this builder just finished building. He stated that the gentleman raised the issue of consistency and he doesn't think there is any consistency in the design of this house. The builder built a house that you can see from Wolf Rd. This house towers over every house in the neighborhood, but not only that - it should never have been approved. The owner of the house can't pull her car in or out of her garage because it's too close to the property line. The City should have been responsible for that. He thinks that this gentleman bends the rules every chance he gets and he is afraid he's going to do it again. He is already not satisfied with building a house or two houses on a lot – he has to have 4 houses on the lot? Everything is more. Everything is greedy. Everything is self-serving and it doesn't take into account the community at all. He could build a house that would be compliant that no one would have been upset with – that would fit, but he's sure he won't. He went on to say that he was just told there is another house that was in question over towards Lake where this builder tapped into somebody's sewer lines - instead of doing what was right and building his own sewer line and that the City itself had to pay for the correction because he fought it. He believes Joann Post may know more about it than he does. He'd be happy to let her talk, but he just had to raise the issue because this gentleman doesn't play by the rules. He remarked that is all he has to say and thanked the board.

Mr. Barbour thanked the resident for his comments and advised that he'd like to address them. In this particular application, what is in front of the planning commission is whether this piece of property should be divided and whether the road, as part of that, should be extended. What is going to be built on the properties that would be created and who does it, what they look like, and all those kind of questions – aren't part of this application. He understands from the resident's perspective it's all rolled into one – it's all one thing, but from a legal perspective the application is whether the properties should be divided up as proposed and the road extended.

Joann Post advised that she has a couple of questions. The house that Mr. Wyant just mentioned, across the street on Forestview, Noelle Sayles cannot pull into her garage. Why was that plan ever approved? She knows that Mr. Barbour doesn't think this is something that is supposed to be addressed, but she would like the reputation of this builder to be evaluated. Why has the City had to pay \$100,000 to have that sewer line replaced – it was our tax payer money rather than Ed Pavicic's – who built this house on Lake Rd. She doesn't know the address. The City is responsible for paying for that – how did that happen? On the Northside of Red Oak Ct. there is a house that Mr. Pavicic built that is obviously above grade. As a result, when it rains the patio is flooded. Why isn't the builder responsible for these things? In addition, she is aware that Ms. Sayles has had other problems and Mr. Pavicic is working with her on them – however, just to reiterate what she's heard from Ms. Sayles, the amount of repairs that she would have been responsible for, had he not been helping, on a new \$780,000 would have been between \$30,000-50,000. She added that she believes her sewer line is not connected properly. How are these things happening? Why are the

builders not responsible for this? Why are the owners of these houses or the City responsible for this? It doesn't make sense to her. Why is our taxpayer money paying for Mr. Pavicic's problems?

Mr. Barbour responded that he understands her comments. Issues that have happened with the applicant's prior construction would be matters that would come up at a different time. The planning commission can only decide on the application that is in front of them and whether it is acceptable under the codes that they have to apply. He doesn't have answers to her questions because he is not familiar with all the circumstances. He is not 100% sure that this would be the appropriate venue to address those concerns. Again, same thing to the gentleman's point, he understands as residents this is all rolled into one. The planning commission has to operate under the rule of law that applies to them.

Mr. Foster added in regard to the comment about houses, and he knows he has said this in this venue before, it does trouble this board that houses are being built on lots that aren't necessarily appropriate for their size, scale, or configuration. It troubles the board that small lots, especially in residence district A, are being fit into areas that really and truly they shouldn't be and he has brought this up before. The Architecture Review Board (ABR) in this City does not review residential properties. He believes this to be a problem. This board does not have a purview over residences and what gets built and where. So when it comes to approvals – as long as a house meets the zoning code requirements it can be built and that is clearly a problem. He knows council is addressing that and he would encourage all of you to continue following up with your council people. Because, as he's said before, we are a victim of our own success. People want to be in Bay Village. People want new homes in Bay Village and new homes are typically larger than a lot of homes that we have in this City. He added that he lives in the Western end of town. He lives in a neighborhood that has been way overbuilt. We have to continue with our council people to get us the legislation. When he say 'us' he means all boards in this city. We are all volunteers and we have an architectural review board and it needs to sink its teeth into what is being built in our city.

Ms. Post remarked that she has two questions – why is the variance no longer required? She thought there was a variance on the turnaround problem. She understands this is the application process, but who decides who is allowed to build in the City – based on the history of the houses that have been built. Who decides who gets a permit to build?

Mr. Barbour responded that on the variance regarding the dead end street. Our code requires a cul-de-sac on a dead end street. When they were going through the preliminary process, and early on, it was his opinion that the applicant would have to either put a cul-de-sac or seek a variance and he voiced that opinion earlier on in the process. As we got through this more, and he spoke to this at the last meeting, he looked at the former plats. Why are there dead ends there now? What happened? And he noticed that on '74 there was a dead end, when the very first Red Oak was put in, and then '85 as it extended north there was a dead end, and then in 2001 Red Oak Ct. it has a

dead end. The '85 & '01 plats showed temporary turn arounds. If you look at our code, if a dead end street is of a temporary nature then they can have a similar type turn around like what is proposed by the applicant and what is shown on the drawings, but never installed on Red Oak. As we got further along in the process he was able to conclude that they don't need a cul-de-sac if the planning commission determines that it is a temporary dead end they then just need a turn around. Some sort of plan so vehicles can make a 3 point turn – which their plan contains. The planning commission could conclude that they do need a variance, but in light of the fact that for the last however many years the road has been able to be extended and remain in place without a cul-de-sac would dictate if they did request a variance it should be granted based on prior conduct of the City. We didn't require a cul-de-sac before, what has happened now that would require one? One could argue that it is not temporary and that it's going to be permanent. Well in 2001 we said that same thing and here we are 20 years later. Our code doesn't define temporary and we haven't enforced it in any other way. We've created a situation for ourselves the time limit for a temporary dead has not been set out anywhere. Our prior course of conduct dictates that as long as they have some sort of acceptable turn around they can have a dead end without a cul-de-sac. There is no real point in them having a variance. He remarked that he couldn't find record, although he's not saying it didn't happen, in '85 or '01 where a variance was required or granted. From a legal perspective, the prior course of conduct is very important. If we were to get in a dispute with someone and what we've allowed in the past under the same or similar circumstances becomes a very important factor. As we got into the final plat, it appears they don't need a variance.

Mr. Petkash advised that maybe it's time to start a new precedence starting now and enforce the fact that a cul-de-sac is required. Is this street ever going to go through? It doesn't appear so. The property owner on the Northside intends to keep it a continuous lot without a street going through. So that would make it permanent. It would require a cul-de-sac and would require an application for a variance and if the planning commission decided not to issue the variance this project becomes a lot less liable and it eliminates at least one lot.

Mr. Barbour responded that he understands his argument, and he's thought about that. In 2009, there was an application to put a house next to that piece of property that was filed with the planning commission and was heard in two meetings. Mr. Rewald filed an application along with another residents whose name he can't remember, to put a house there at the end of the street and the application was withdrawn and the minutes show that it was discussed that the plats from '74, '85, '01 and the City's master plan show that the plan is for that street to eventually go through. So that was really the last time that it was discussed. We don't have a crystal ball, but certainly our prior course of conduct, in dealing with other applicants, has been that we have granted them the benefit of the doubt when it comes to a dead end on that street. Changing course now could be a potential problem, on the very same street, where we have elected to let it continue.

Cheryl inquired if there were safety concerns with putting a street from Red Oak Lane to continue that through to Red Oak Ct.? He's also putting a street east off of that street so that the house that is front of there currently can be front facing?

Mr. Barbour remarked that the Red Oak Lane that comes off Bayfair - the applicant is proposing to extend that north 85' that's the street.

Cheryl responded by attempting to clarify if there will be another street put in front of the brown house that is there currently?

Mr. Barbour attempted to clarify which home she was referring to. Was it a house that is technically on Forestview?

Cheryl responded that yes technically it's on Forestview.

Mr. Barbour advised that the extension of Forestview, that is part of this application, would be behind what is the current back of that house.

Cheryl inquired if there will there be a street running into the garage?

Mr. Barbour advised that the plan is to extend the driveway to the new extension. The applicant's engineer may be able to address that better.

Cheryl advised that she'd like that because there are a lot of children that play in this area.

Mr. Hoffman advised that the existing house, that has a driveway on Forestview, there will be a new garage built on that house and it will face towards the new roadway on Red Oak Lane. The driveway will be off that new street.

Cheryl inquired if there will only be one street? It won't be L shaped?

Mr. Hofftman requested to share his screen to show the plans. He proceeded to share his screen of the proposed roadway. He showed the existing house that currently has a detached garage that will be torn down and a new attached garage will be added to the house so its driveway will go to the new street. He also showed the new turn around that has been added in lieu of a cul-de-sac. The last drawing showed how emergency vehicles can complete a 3 point turn on the proposed street extension.

Cheryl remarked that answers her questions, but she is wondering how will the garbage trucks get garbage out of there. They can't seem do it on the other side of Red Oak Lane without hitting mailboxes.

Mr. Hoffman remarked that they'll use the same pull around/back up into the same turn around as the firetrucks to exit back to the south.

Cheryl remarked that it was a lot of finagling.

Mr. Foster remarked that there was a second part to Ms. Post's original question regarding builders in the City and inquired if Mr. Tuck-Macalla could address that question.

Mr. Tuck-Macalla responded that as long as a contractor is registered with the City they can build in the City. They have to provide their insurance, a registration form, and then they can build in the City. He remarked that it's actually pretty simple.

Ms. Post inquired why a builder is still permitted to build in the City when multiple houses that he's built have had major problems, like the one that sits on Lake Rd. where the City paid \$100,000 to attach a sewer line.

Mr. Tuck-Macalla responded that the City doesn't have any provisions stopping someone from building in the City unless there was some sort of legal action against them. In his 20 years, he can only think of 2 or 3 builders that have been prohibited from building in the City. Not just this City, but other Cities.

Ms. Post remarked that there was legal action taken.

Mr. Tuck-Macalla responded that it would have to be criminal action.

Ms. Post remarked isn't it a criminal act to tap into a property's sewer.

Mr. Tuck-Macalla advised that you'd need to be convicted of a crime. The only two builders that he's ever known to not be able to build in a City have been convicted of fraud.

Ms. Post remarked that you can tap into another person's sewer line and that's okay. Is that what you're saying?

Mr. Tuck-Macalla responded that that is not what he's saying. He's saying that anyone that registers with the City and hasn't been convicted of fraud. There is a list that the Ohio Secretary of State has and as long as they're not on that list they can build in the City.

Ms. Post advised that she has one other thing that she wants to add. She has googled Red Oak Properties, EFG Homes, Ed Pavicic, and never sees anything show up on google. She understands there is a way to pay people to minimize your name appearing so that things are not written and viewed by people. Is this something that could happen in our City? Is it possible things have happened and we're not able to read about it?

Mr. Foster remarked that he wants to bring it back to the application and it's not about the applicant. It is about the application they are reviewing.

Ms. Post inquired if there was a way we can add that to this commission? Like you said earlier, an Architectural Review board? We need to have people who are vetted and know what they're doing and trying to build proper homes in our City than this kind of behavior and destroying other people's property in the process.

Mr. Foster advised that he doesn't disagree with her and suggested that she follow up with her council people about how to make that happen. He inquired if we had any more comments?

Jan Maziasz introduced himself as the resident of 567 Red Oak Lane. He would like some information on what the latest on the FEMA discussion since part of that property is in a floodplain.

Mr. Bierut advised that, as the City Engineer, he can speak to that. The applicant submitted information to FEMA to determine the flood elevation. FEMA got back to them and gave an elevation. If they fill the property above that elevation they can build a home with a basement. If they want to build a home without a basement they could built as soon as the road goes in. They don't need any approval from FEMA at all. That Conditional Letter of Map Revision (CLOMAR) says you can build a house with a basement, but you have create this property/do things a certain way and once you've done that you can prove that you've done it and we will give you a Final Letter of Map Revision which allows the builder to build a home with a basement on the lot to the West. Like he said, if the builder chose to, and he doesn't know if the home will have a basement or not, but if the builder chose to have a home with no basement he could build it with no FEMA interaction whatsoever.

Mr. Remein inquired if the Letter of Map Revision is to remove the property from the flood plain?

Mr. Bierut responded that they way to 'remove it' is to raise the level of the property. Once it is high enough the flood waters, in theory, wouldn't effect it. Mr. Tuck-Macalla can correct him if he's wrong, but if no part of the home can be invaded by water then it can be built on the property as is. Basically the first floor would be higher than the flood elevation, but a basement would not be.

Mr. Petkash when the property is filled where does the runoff go from the sealed property? It is going to go into the neighboring lots. It is going to go through their patios and gardens by changing the elevation. He lives on the creek and when it is spring time or there is a heavy rain that creek rises very high. It could easily back up enough to damage his property and that concerns him. FEMA does all kinds of studies and things about 100 year storms, but as far as he knows Mother Nature doesn't agree to surveys and doesn't understand surveys. As soon as that lot gets filled, the next major storm the whole neighborhood is going to flood. We are just trying to protect our property.

Mr. Maziasz advised that he has one more comment. Last spring, the developer started doing some interior work on the house that is existing there. They tore out a lot of drywall, and whatever else, and then they stopped and now on the back porch there is all sorts of trash. There is an old refrigerator, old paint cans, painting equipment - that has just been sitting there for months. The neighbors have to look at this. If this is an example of how this developer is going to operate - are we in for more problems? Is he going to run out of money half way through and we're going to have to look at houses that are half built for how long? No one has taken care of the property and the neighbors have to look at a very unkempt yard. No one is living there and it's not very nice to look at. What recourse do we have if he is going to end up being negligent in finishing this project?

Mr. Barbour remarked that if there are property maintenance issues for an existing property they should, and now you have, make the City aware of it. We have a property maintenance inspector and we can approach any house and see if it is in violation of our codes. As far as the time to complete a project he defers to Mr. Tuck-Macalla on that as to what the building permit process requires and allows.

Mr. Tuck-Macalla responded that now that it's been brought to his attention the building department will address the issue of the property maintenance of that existing home. He has been out there a couple times himself, a couple months ago, to find out what was going on. As far as if a house is started and not completed - we do have protocol for that. We have a system of enforcement - it's not something that we're going to leave/let go. We have had houses that have been abandoned in the process of being built and we address those as best as we can. In worst case, we will end up going to court over it. Usually we can work things out with the builder if they get to the point where they can't finish the home. We do have ways of addressing that.

Mr. Remein inquired if a bond is required when someone applies for a permit?

Mr. Tuck-Macalla responded that a bond is not required in the City of Bay Village.

Patrick McGannon introduced himself as a resident of Bay Village, Bradley Rd, and the president of the Bay Village Green team. His question, coming into this late, is in regard to the riparian zone due to Tuttle Creek's location. The City already has a riparian ordinance which sets the disturbance of 25' is that being considered in this application? Are the plans not touching the riparian zone as our ordinance is laid out?

Mr. Tuck-Macalla advised that it is not touching the riparian zone.

As an aside, Mr. Barbour requested that Mr. McGannon resend him the link from their previous conversation about Strongsville.

Marcia remarked that they keep saying it's not this council's job to decide about the quality of building in Bay Village, but nobody has really said who is responsible and what can all of us do to say we care about the quality of the house that sits next to us. We care about the reputation of the builder, we care about the resale value, and our neighbors who unknowingly buy houses that have to be redone. Ms. Sayles that they talk about on Forestview, she's not the first one. She's just one of many that have has the exact same problems. Please tell us – who do all of us go to in order to share these concerns? Thank you.

Mr. Foster responded that he wishes he had a single point of contact for that, but honestly there is not. As he mentioned before, having an architectural review board that would review residential properties would be the way to do that and he has no other answers. It discourages us, clearly, when they hear stories about the quality of the work built in Bay Village and he does with there was something they could do about that.

Marcia responded that someone must know who is in charge. Someone has to be in charge. They're saying no one is in charge. You're saying we need an architectural review board and that has been discussed, at length, by certain people, but that doesn't necessarily address the quality of the builder. We aren't talking about the color of the house or siding or stones – we are talking about the quality of the home – not the aesthetics. You're talking about aesthetics. The rest of us are talking about quality and trusting a builder not to tap into your sewer system or not to build the house incorrectly and then pass inspection, for whatever reason, and other people have problems with flooding. Somebody is responsible for that. Who is it? If it's not you – who is it? Thank you.

Mr. Foster inquired if there were any other questions or comments.

Ms. Oley remarked that she didn't have any hands raised at this time.

Ms. Byrnes Maier advised that she'd like to follow up on the last comment. One of the key determining factors of bringing the building department back in house vs. being subcontracted out

was to get ahead of issues such as those. So that there is a quality level of inspection and quality level of checks and balances for things like grade applications, pouring foundations, and electrical. That was a big change for this administration to bring this back in house to try to alleviate issues. That doesn't speak to all of those points from the last comment, but it is a way that the City has tried to address some of the weaknesses from the prior term when we had it subcontracted out.

A female on the call remarked that no one has an answer has for Marica regarding the responsibility?

Mr. Barbour responded that he does and he can give an answer and to follow up to Ms. Byrnes Maier's comments. He believes that the timeframe, during which these alleged problems or occurrences happened, was during the time we had outsourced the building department between 2012 and February 1, 2019. Beginning February 1, 2019 we brought our building department back in house and what that does is we have much more consistency on our inspections. We have total control over the inspectors and the process that is used and the timing and the constancy. We brought in a long time building department professional in Eric Tuck-Macalla from another city, with over 20 years' experience, and he can tell you, as Law director, he can see the difference. That will improve some of these circumstances, but what the building department can't do is anything that is beyond what is contained in the building code. They enforce the building code and how a particular builder decides to apply that code – the attention to detail they spend – probably dictates the quality. Currently, we don't have a mechanism to address, what he think she means by quality. He is am using his own definition, but it is probably the same thing. Maybe an architectural board of review would help that – he doesn't know. It would depend on what their charge was. What the language that created them allowed them to do. As far as the City goes, we cannot prohibit people from coming into the City unless they have criminal convictions. We are just not allowed. We can only enforce the building code. We cannot insist, with the code, that we have that a certain level of quality, as we perceive it, be maintained. And unfortunately we just can't – no city can. If we could figure out a way to do that it would be very welcome, but as he sits here he doesn't know the answer to that. So to say 'no one is responsible for the quality of the builder' is not completely inaccurate because the City is responsible to make sure that the building code is followed both on paper, with the plans, and then in execution by use of inspections. We do that. He doesn't know what happened to these other properties and he's not going to comment on those, but he knows that the ones that you're talking about, that he's familiar with, didn't take place when we had our own building department. The issues of quality are difficult to address under the code that we have. As all issues of subjectivity are. It is very difficult, legally, to exclude a builder because we feel he doesn't have a good reputation when those terms are not defined in a code. There is not a lot of room to insert personal opinion into those kind of interpretations.

Mr. DeGeorge remarked that she has a procedural question and a comment. With the adjustment to the original plan does that change the procedure, in as much as, originally this was to be

approved through planning commission and then come before council. Now that there is no cul-de-sac and the plans have changed a bit –will this still come before council or will planning commission have the final say?

Mr. Foster advised that he would like Mr. Barbour to comment on the procedure, but in terms of what has changed on the application - the application hasn't materially changed since it was submitted. The item that Mr. Barbour mentioned about not needing a variance just surfaced through his due diligence in reviewing through the prior plats and reading the code in finer detail.

Mr. Barbour remarked that nothing about the variance changes the procedure. Under the final plat in 1109 this would go to city council.

Ms. DeGeorge confirmed with Mr. Barbour that since this will still go before city council she will hold her comments until that time. She then inquired when planning commission will vote.

Mr. Foster advised that it is on the agenda for the formal meeting this evening.

Ms. DeGeorge then referenced Marcia's comments saying that she is all for the creation, and open to the creation of, of a residential ABR, but it would not be responsible for making the same types of decisions that the planning commission will make this evening such as split lots and turn arounds. We can have that conversation in more detail at a later time.

Mr. Maziasz advised he doesn't want to beleaguer the point, but since the claim is that you only have so much control over what gets done. Let's say this goes through and then some of the neighbors flood. Who is responsible? Can we go to the City for repayment or the builder? This has been a problem in communities with over development.

Mr. Barbour remarked that if he can establish that the cause of your flooding was a 3rd party, such as a builder, then you would go to the builder.

Mr. Foster remarked he'd like to point out a couple details that the board has reviewed related to this application. We asked those specific questions. One of the requirements that an applicant for a lot split needs to provide is a means to control their own runoff and that has been provided by the applicant. There is an approximate grading plan with some yard drains shown. In fact, Mr. Bierut has requested that those yard drains be put in before the house is even built. Knowing that each property owner is responsible for their own storm water.

Mr. Bierut remarked that there is an approximate grading plan and that there are not yet grading plans for each home. There is no footprint for each home, but the developer is responsible for putting in the drainage when he puts the houses/street in.

Mr. Foster inquired if that answered the resident's question.

Mr. Maziasz remarked that the builder is obviously having problems with the construction of so many other properties – how can we be guaranteed that what he is going to do on this project is going to be right?

A female resident calling in with Mr. Maziasz asked who is going to be overseeing what he is doing and watching every little move he makes? He has such a bad reputation.

Mr. Maziasz added since it's all in house now - can you guarantee that all this will be done correctly?

Mr. Tuck-Macalla responded that the building department is going to make sure that everything is done to code and everything is going to be done exactly as to the way it's presented and approved. For each house that is built there is going to be site plans and that site plan will be sent to an engineer to be approved then it comes back to us and we follow that site plan regarding the drainage. The house is not approved until the engineer goes back out and takes measurements of the topography and makes sure everything is done for the site plan. The same is true for the building of the home. The plans are submitted to the building department and approved by himself and every little code item on that plan is completed and is done to his satisfaction before he issues a certificate of occupancy. That is why he was hired and that is what they do in the building department.

Mr. Pavicic remarked that he's heard a lot of comments from everyone and it is very disheartening to hear false statements. Especially from Ms. Post. He doesn't want to go into detail about it, but she is over exaggerating numbers, figures, and facts to push her agenda and it is disrespectful to the board. The property on Lake Rd, if you have any idea about the situation you would have accurately stated the facts. That was a sanitary line issue that the City had an issue with 70 years ago when they split a lot off. It was irregularly split off. We were tying back into a house that we demo'd because it was in completed disrepair and could not be salvaged. Long story short is the City is required to put sanitary lines in and the messed up 70 years ago. It was nobody's fault – it wasn't \$100,000 - it was the service department with 3 guys for 2 days putting in pipe at about \$4,000 cost. That is one example of things he's sat here and listened to, patiently, and it is very disheartening to hear that from people trying to promote their own agenda. If anyone has any questions for him he'd be happy to answer them.

Ms. Noelle Sayles remarked that she has a couple questions. When they were talking about grading - was the same person in charge of that in July 2019. She advised that she lives in the house that Mr. Pavicic built across the street 530 Forestview Rd. She is just wondering if the same process

was in place, for grading, when she purchased her home. She is asking because her house was not properly graded. Mr. Pavicic told me it was. Groundworks, Tony Nasrallah, has done tens of thousands of dollars of work, but they are still working on the grading in her yard. It was not property graded. Was the same system in place? If it's the same system it needs to be addressed. It's not preventing houses from being sold with grading issues.

Mr. Tuck-Macalla advised that if she would like to talk with him regarding what is going on with the grading at her home right now he'd be happy to work with her on it. She would need to get in touch with him tomorrow at the building department. He doesn't have the grade plan in front of him right now, but he'd be more than happy to go over it with you and see what is going on.

Ms. Sayles remarked that she knows the City has switched inspectors, because her house was one of those one that was inspected by the 3rd party, but was that also a 3rd party looking at that in 2019? Because she thought she heard that the City took back over in February 2019. Is the same process, which the City used to let my house be sold with a failing grading plan that she's still struggling with, in place?

Mr. Tuck-Macalla reiterated that it is difficult to say, off the cuff without the background, because that was July 2019 - he isn't sure what inspections were done or when they were done, but he'd be more than happy to go over it with her if she'd like to get in touch with him tomorrow. He can only say that he's going to use the same process on the 8 other houses that were finished last year. He thinks they finished 12 houses this year. He uses the same process on every new home that is built.

Ms. Sayles asked if this process was in place in July 2019.

Mr. Tuck-Macalla remarked that is was in place, but he isn't sure who did the inspections, when they were done because he doesn't have it in front of him.

Mr. Barbour added that it's hard to say when her grade measurements were taken, if you purchased your house in July 2019. That doesn't automatically tell us when the grade was taken. There was a transition period where we had to keep using the 3rd party after we terminated the contract with them because we didn't have the manpower yet to do everything. In this conversation, he doesn't believe we can answer that.

Ms. Sales remarked that she just wanted to point out if it is the same process that they are using to review things now – who would we go to make sure that people aren't living in houses with improperly graded yards? So the neighbors aren't getting flooding down the street? Who do we go to address these issues?

Mr. Tuck-Macalla answered that she would go to the building department.

Cheryl remarked that she has a couple more comments. The house at 546 Red Oak Lane. She knows that it was bought out of foreclosure and sat for 15 years or some large amount of time with no vacancy and she knows that Mr. Pavicic came in and finished it. The trellis out in the front yard aren't cemented into the ground. The trellis is sitting on top of the cement. She doesn't know what building department is approving these things. She thinks we have an issue with the building department if we keep seeing subpar quality in these homes maybe it's the building department. Or maybe we're not giving the planning commission the right tools that they need to make these decisions. We cannot continue to be Bay Village and afford all these high prices for these homes, but not be able to provide quality construction. There was mold in that basement. She knows that he ripped out two 4x4's, she called the building department about it and told them, they said all the mold was removed, but when the realtor shows the house they have to turn the air conditioning on before they have the people come in to visit the house. She is not sure what is going on with the building department.

Ms. Byrnes Maier remarked that she'd like to address that comment. City council appropriates funding. That is part of our mandate. The administration had recognized the issues that were coming up regarding the 3rd party building department and they, as a council, with the administration made the decision to bring the building department back in house. It costs a little bit more on the front end, but she thinks the dividends are that they avoid situations like this going forward. That was a very well discussed, researched, and thoughtful process to bring the building department back in and to hire qualified individuals to do the work. It is not that the prior organization was terrible, but they didn't have consistent people that knew the code back and forth like our employees do. In terms of the timing, she believes what Mr. Tuck-Macalla and Mr. Barbour were saying is that some permits issued under the 3rd party were continued to be worked on by them until they were closed out because they issued them. There was a time period where the building department was being built up that the 3rd party continued, but exactly what you're talking about here is why we have an in house building department and that was something that the administration and council recognized as for the quality of Bay for the services for the community that was something they needed to bring back in house. So that people didn't have to go through this.

Mr. John Ross introduced himself as the owner at 550 Forestview. He advised that he has 3 issues that he would like to put before the building department. Chapter 1111.01 requires a cul-de-sac turn around and it says that a variance can only be granted if the owner of the property is denied the right of his property. When Mr. Pavicic bought this property he knew the requirements. This is not as if the rules changed and now he wants to do something. He came in knowing that we required this and he cannot meet this requirement. The second thing, two weeks ago the Westlife had an article in it that the city council was upset that too many people were cutting down trees in

Bay Village and we should save as many trees as we could and prevent people from willy-nilly cutting down trees. Where Mr. Pavicic put that property behind the house, that he is proposing, he is going to have to cut down several trees in order to put that in and that is opposite to what city council presently wants. Lastly, paragraph 1120.1 says the granting of the variance will not be detrimental to public welfare or injurious to other properties in the territory and that is one of his big complaints. Mr. Pavicic wants to build a house, in the yard, right next to me. His bedroom has two big windows, his dining has two big windows, his bath off the master bedroom has a window that all face south. Mr. Pavicic's proposal is that he should be allowed to build 15' or 20' away from the south side of his house - which my windows face against. It would be like him living in a fishbowl. He would not be able to open his windows and have a sense of privacy. My neighbor, whoever they might be, is going to have the very same problems. If he stood outside your bedroom window, 15' away, looking in he would be called a peeping Tom and he'd be prosecuted for that. He doesn't know how they can claim this won't be detrimental. Since he wants to put up a two story building he won't have any sunlight coming in his windows because he will have a house next door blocking the sunlight. He has been here since '93. Here we have Johnny come lately... The reason he bought this house, and moved to this suburb, is for the open space and privacy that he has there. He is really angry that he wants to take it away so that he can make a profit. If having a window 15' away from his bedroom and bathroom window is not injurious then he'd like to know what Mr. Pavicic is injurious.

Mr. Foster inquired if Mr. Barbour would like to recap the variance discussion we had earlier.

Mr. Barbour remarked that the variance that was discussed only dealt with dead ends on Red Oak Lane. The part that is going to be extended, and it appears to him, under our prior decision as a City this is a temporary dead and that a cul-de-sacs wouldn't be needed. Therefore they don't need to request a variance for this street. He talked about it at the last meeting, that he believes Mr. Ross attended, and he isn't not sure if he was on the call when he discussed it, but through the course of events it is his opinion that he doesn't think a variance is required because they can constitute the dead end because we have permitted it a few times on Red Oak so far. The other issues aren't really... Your complaint seems to be that he's going to build a house next to you, but that can happen when you live in a neighborhood of houses, which Red Oak, Forestview, Bayfair. It's all neighborhoods of houses.

Mr. Ross remarked 15' away? If he stood outside your bedroom window 15' away – he'd be called a peeping Tom.

Mr. Barbour remarked that would be alarming, but he doesn't know how far away the house is going to be from his house. That remains to be seen. If and when, and it's likely when not if, there will be a house constructed there, and that's why he's going through all this, but those issues get

addressed when the house is constructed and the notice is posted. That is why we have side yard requirements and setbacks and those type of things which are already in existence.

Mr. Ross remarked that all we need to do is look at the house he built recently, he forgets where it is, and those houses are about 20' apart.

Mr. Foster remarked that the lots that are in this proposal are all properly sized lots. They are legal lots. The set backs are very lenient in the East end of this City.

Mr. Barbour remarked that the issue in front of the planning commission is whether these would constitute buildable lots. The location of a structure on that lot is governed by the zoning ordinances and when it comes time to construct the house the building department will make sure that it meets whatever those zoning requirements and building codes are for that lot.

Mr. Ross remarked that he will put it off for a future time. He watched the plans that were proposed and he knows what he plans to do and this is just step one. If he gets step one then he'll have to fight him step three when he wants to build that house. And like he said he has a bedroom and bathroom window that will look 15' out on a house that is looking back at him.

Mr. Barbour stated that he doesn't dispute what he's telling him. What he is trying to relay is that – this really isn't the time for that to be considered as part of the application.

Mr. Kirk advised that he had a point of clarification. The temporary turn around easement is going to be required – correct?

Mr. Barbour responded that the plans show a temporary turn around – yes. That would have to be installed. The approval is contingent upon them doing what in the plan.

Mr. Ross inquired what they consider temporary. How long?

Mr. Barbour responded that as the Law Director of the City of Bay Village Red Oak Lane, when he looks, as he said before, to the prior plats of 75, '85, '01, he would say temporary is not defined, but it can apparently be 20 years or more. It is not defined anywhere. In 2001 and 2005 we allowed Red Oak Lane to have a dead end that is still there without temporary turn around and this is the same circumstances the road is just being extended 85'.

Ms. Sayles asked if someone could explain to her why this is even a consideration to split a single family lot into four. She is just trying to make sense of that – is this the same council that strictly limits all Bay Village residents to 32' of 6' privacy fence so as to 'not alter the look or feel of Bay

Village'. Wouldn't splitting a single family lot into 4 be way more altering than 5' extra feet of 6' privacy fence?

Mr. Barbour advised that the application is 4 pieces because one of the pieces is the new 85' section of Red Oak Lane. One lot will, if this is approved, be made into 3 lots – which all meet the square footage code and setback requirements. So it is permissible under our code.

Ms. Sayles thanked Mr. Barbour.

Marlene stated that she just feels that the board has already decided it. She feels like it doesn't really matter what anybody says. It appears, that the decisions have already been made and this is just a formality. She feels like it is pretty unfair honestly. There is a lot of concerns with the road, the construction, the nature, the privacy, the canopy and it appears that none of it makes any difference to anyone. It feels like, to her, the decision has already been made and she just wants to voice that to all of you – honestly.

Ms. Lesny Fleming requested to address Marlene's comment. She introduced herself as one of the members of the planning commission and thanked her for her comments. Mr. Foster, who has been a great leader for us, made a few comments at the beginning of our session that he was speaking on behalf of the commission and she's sure he didn't quite mean to say it that way. He is only speaking on behalf of himself – he is our leader, but we all come into this separately and independently. We are all come in differently. We are all either engineers, architects, lawyers. We are not paid for this position we are all just citizens of Bay Village. We don't speak beforehand, just so everybody is clear, we don't do things behind closed doors. What you see, during these meetings, is our deliberation process. So we don't come into these matters with an agenda or something decided. Again, every planning commission member is coming in separately and independently with their own views. She didn't want there to be any confusion that somehow that one person could speak on our behalf as a group. We look at everything independently. She thinks, as she's heard here today, the planning commission, whether it's good or bad, has a very limited role here. They are only allowed to do what they are permitted to do by the ordinances and by the City charge. Unfortunately we are not the group that can determine whether something is the right type of property or aesthetically pleasing. Or all those kind of things in respect to the qualifications, or lack thereof, of the developer. They just don't have that ability - even if they'd like to have it. She does have some questions on the variance that she can reserve to when the public hearing is concluded and they are all still on the line talking about the approval, but she wanted to make that point/her position clear.

Ms. Byrnes Maier advised that she'd like to add something. She introduced herself as a member of city council. City council has representation on planning commission and she is that person. While planning commission has to abide by our codified ordinance, or the zoning law for the city,

these discussions are helpful. They are working on tree ordinance for the city right now. They are talking about if a residential ABR should be developed. There are other council members listening on this call and following this. These are all points that help us determine if there are modifications, or changes, that are needed to the code and what those are. It might not impact this particular project, but don't think that this is ever without merit. It might be frustrating, but we have a duty to follow the code. We are always learning and we can put that into play and create changes to the ordinances to avoid issues and to better capture the intent of the community and to do so legally.

Mr. Foster added, to address Ms. Lesny Fleming's comment, we are all individuals coming into this. They do individually deliberate every project that comes before them. They spend a lot of time outside of this venue, themselves, researching/reviewing situations, and visiting sites. He lives not far from Red Oak and he's walked down there many times. They have a pretty good understanding of this. They take everyone's comments pretty personally because, obviously, we're your neighbors. They understand this - they live this stuff everyday as well. None of this is taken lightly. He thinks, as you heard and as Ms. Byrnes Maier pointed out, for the understanding of what our code says and what is allowed to be done on parcels of property what can be legally be built anytime on any piece of property is important for everybody to understand. Obviously we all have a vested interest in how the properties around us are developed. We want them to be done the best way possible and that is all this board has ever wanted to have happen.

Ms. Becky Olsen advised that she understands the planning commission and she thinks they did a very good job of explaining it. She understands that legally these houses can be built. She just wants to express her opinion on this particular builder. He has been a constant problem for the City and she knows it's very easy to say 'oh, all the problems were Safebuilt'. But she just wants to talk about our problems. She thinks they've heard it again and again from everybody else that has dealt with the building department. What we found he did is - he would submit plans that were legal, and according to code, and then he would build something different. She knows it was Safebuilt at the time, but then Safebuilt would tell us 'well he built it - so therefore we have to allow it' and the same thing would happen again. If you have a builder and every person who either buys a house from him, or is in a house next door, has a problem with one particular builder - maybe the City needs to have a list of register contractors. Yet you allow a builder, who has problems, to do it again, and again, and again. She addressed Mr. Barbour - as the lawyer of the City she has every document, he knows her well enough to know that she does have every document, she can show what he submitted to the City and what he built and what the building department responded - and she knows it was Safebuilt - but the City is still responsible for this. It didn't just happen to us - it happens every time he builds. He will submit plans that are legal and then he will build what he wants and then he gets away with it. She doesn't have a problem with what the planning commission is doing and that they might have to approve these houses because it seems to her that they are legal houses. She wants to know, what guarantee what anybody on this call has that the building department will do their job. They will make sure he

follows City code every step of the way. Because again and again we hear he doesn't. Again and again we hear flooding problem. It's not a new thing - all of us can tell you the same story. How do we know the building department is going to do anything different this time? Saying its' the building department now vs. Safebuilt doesn't provide a lot of comfort to her. She doesn't know if anyone else believes it. That is really all she has to say – her problem is with the particular builder that they are approving.

Mr. Foster inquired if there were any final comments. None being heard he closed the public hearing for tonight.

REGULAR MEETING OF PLANNING COMMISSION

Chairman Foster called the meeting of the Planning Commission to order at 9:07 p.m. with a Roll call.

Property Address: 560 Forestview Road Parcel#20405007

Owner: Red Oak Investment Partners, LLC

Engineer: Polaris Engineering

Red Oak Lane Subdivision- Approval to split the lot 204-05-007 into four separate sections.

Chapter 1111- (Subdivision Design Standards)-(b) Location. All lots shall front and abut at the right-of-way lines by their full continuous frontage on a publically dedicated street or a street that has received the legal status as such.

Mr. Foster then introduced the only item on the agenda as the one that they have been discussing and inquired if there were comments or questions from the board.

Ms. Lesny Fleming remarked that last time they spent a lot of time on whether or not a variance be required here. She knows she was asking Mr. Barbour whether or not we were being instructed to find for a variance or not. Tonight it's been discussed that there should not be a variance, but she remembers from the last meeting that we were being told it was a question for the planning commission to make a determination about whether or not this is a permanent dead end street, where you would need the cul-de-sac, or whether it is deemed to be a temporary dead end street – where you wouldn't need a cul-de-sac. The question/concern she has is she doesn't see in the ordinances where the planning commission makes that determination if a street is, in fact, a dead end street vs. a temporary dead end. To her that seems like something the city council should be deciding. She also pointed out there is no definition for either term.

Mr. Barbour remarked that he would like to address that. The planning commission is in charge of planning. All platting placement of roads, all the issues related to that fall under their purview. By nature of that - they do have the power to determine whether it is temporary or permanent. The

body does that through their approval of the plats or outright saying that it is temporary in the minutes. For example in 2009, when Mr. Rewald made his application to build a house on this property, the planning commission noted that it was their opinion, at that time based on the master plan and other platting's, that the road was going to go through all the way and connect the two Red Oaks. By nature of fact that planning commission by charter and ordinance handles platting for the City and placement of the roads. It's in their authority to make that determination. He gives his opinion, as Law Director, based on his interpretation of the ordinance and charter and those kind of things to not just the planning commission, but BZA, city council and other departments. It's up to those entities whether they like that advice or whether they want to follow that advice or not. That is what this situation is. He can't tell you that they have to do something – he can only tell you what his legal opinion is which he voiced earlier.

Ms. Lesny Fleming responded that she knows the planning commission has responsibility for the final plats for planning, but the final plats are really approved by council. If you look at 1105 they are submitted to council for final action. So if they have a question about whether something is truly a permanent or temporary dead end street she thinks you go back to council to help make that determination.

Mr. Barbour responded that he disagrees. That is not his opinion. His opinion is when you read all the charter and all the ordinance that apply to this – they make your decision then it goes to city council to take whatever action that they take on it. Either approving or disapproving it or changing. They do, in fact, make your determination - there is no process, in our code, where they get, for example, an opinion from city council as to how you should act. He stated that he respectfully disagrees with her interpretation. He not only thinks it's within their power he thinks it's their responsibility to make that determination. Either explicitly or implicitly with the decision that you make.

Ms. Lesny Fleming inquired what the throughoutfare plan shows with respect to this street.

Mr. Barbour responded that he doesn't have that in front of him. He knows that the consensus always been that eventually Red Oak is always going to go through, but he doesn't have the throughoutfare plan.

Ms. Lesny Fleming remarked that she hasn't seen it and that seems like something they ought to see. Wouldn't that indicate, the throughoutfare plan, whether it is a temporary vs. permanent dead end.

Mr. Barbour responded that he doesn't know. He does know that the plats that were previously approved by both planning commission and city council and are recorded show them as temporary.

Which would implicitly say to him, if not expressly, that they are temporary. But he doesn't have a throughfare plan in front of him.

Ms. Lesny Fleming inquired if anyone has the throughoutfare plan?

Mr. Foster responded that the one thing that is in the application, with the proposal now that wasn't with its initial application, is the turn around that is there. At their first meeting they discussed not having a full 100' diameter turn around and what were the implications of that. Obviously there is two dead end streets there now. Are they perpetuating a negative situation now by allowing the applicant to extend Red Oak Lane further than it is right now? It was at that time the hammer head turn around was added to the project. When he sees that, and there is a question that came up in the public hearing regarding the trash truck or emergency vehicle do, he believes that is one improvement that is in this which is not there currently. There have been times he's driven down Red Oak Lane and he has to pull in somebody's driveway to turn around and that will be alleviated with having that turn around off the roadway. He doesn't know if that addresses Ms. Lesny Flemings concerns regarding the temporary nature, but it somewhat addresses the need of the turnaround.

Mr. Kirk remarked if they were to make a decision that this is not temporary what would the ripple effect be for the existing dead ends. Would they just be allowed to remain dead ends? How would they be changed or would they not have to be?

Mr. Barbour responded by inquiring if he asking if people or the City is going to have to go change a roadway.

Mr. Kirk responded that he's just trying to play this through. If they decide this is not a temporary road and it is never going to go through - so it's a permanent situation. Both those dead ends would not be in compliance with the current code for a turnaround. The land is, however, private property. What does that mean? If anything?

Mr. Barbour responded that he would give his opinion, currently, that they would stay the way they are under some sort of grandfathering circumstance. If further building took place that involved improvement to the road. There would be an argument that a cul-de-sac would have to be in and depending where it was, but the City would not go change every dead end in the City into a cul-de-sac because you rendered a decision on this particular one.

Mr. Kirk inquired if the master plan shows the road going through?

Mr. Barbour responded that it does.

Mr. Remein advised that he has one comment relative to the turnaround itself. In his mind, overall there is no question, that once we complete this it becomes a permanent dead end. It does make a slight improvement adding the turnaround. The turn around and wheel path that is shown on AT1 – you'd have to go up and over the tree lawn in order to get in and out of there. If it is the middle of winter – that fire truck is not going to be able to get through there. He advised that he's laid over semi-trucks and garbage trucks that was always a huge issue for him that if you're going to access it and design it for access that it meets the requirements. And if the truck has to go over a curb in a tree lawn and it's in middle of winter it can't get out that way. Now can he jockey back and forth? Probably - with some degree of difficulty. He would suggest that the T section be made larger and deeper so that the truck can make its turn around on the street.

Mr. Kirk sought clarification. Didn't the Fire Department already completed their review?

Mr. Remein responded that he's looking at drawing, done by the engineer, and shows the wheel track clearly over the tree lawn

Mr. Ross advised that he is a Class A truck driver and that he drove semis from 1975-2009 and Mr. Remein is exactly right. Yes you could jockey that, and he also drove 46' straight trucks, which is probably the size of your fire engine. And he is going to tell you from his own, known real life experiences, what is designed is going to be a real problem. And that fire engine is not going to be able to turn around quickly.

Mr. Remein added to take that a step further – Mr. Barbour had discussed, and he looked up, and there are 20-30 streets that have dead ends that probably built prior to '58 when the turnaround law was enacted. And there is probably another 20 streets that do have cul-de-sacs on them. He doesn't see that this improves or makes anything worse than it already is, it's just an extension of the street. He'd be more concerned about how many trees are being cut down. That is not part of the law. He believes there was a letter received from the Bay Village Green team relative to the value of the water flow and so forth to the lake. Can that be read to the commission? Or has everyone seen it?

Ms. Oley confirmed there was a letter from the Green team that was forwarded to the planning commission and will be included in the minutes.

Mr. Remein went on to say that there are some values that are difficult to measure like, how much additional run off would accumulate because of two lots. It is not substantial, because it's two small lots, but the continual removal until we cover ever last inch of Bay Village with hard surfaces of roofs and asphalt is accumulative. There is nothing in the code that will account for the accumulation of water run off to the lake. The engineer says 'it's based on 100 year storm'. Well that's what it's going to take if we have a 200 year storm - someone is going to get flooded. That

is not what the code allows us to consider. He believe the engineering is done reasonably accurately – but what value is there to the City to allow the houses two additional houses to be built on this portion of the road.

Mr. Hoffman remarked that they did send this plan to the fire department and to his knowledge they have not heard anything bad from them about it. They were okay with the plan. He just wanted to speak to that.

Mr. Foster inquired if there were any more board questions or comments.

Marlene stated that she just wanted to make one last comment. If it turns out that they do approve everything and they put in the road. Just this past summer, her next door neighbor that ends at the dead end street she doesn't know the address offhand 550/558 likely, a truck hit their expensive mailbox and now-a-days they are \$4,000-\$5,000 mailboxes to repair. That truck had nowhere to go, but into that mailbox – they just couldn't see it. Those types of accidents are not going to be uncommon on these dead ends. The other things that she needs them to know is that she feels it unfair to have to wait for a resident to die to do a through street. If you allow this process and do the proper turn around and move on and let the people know that they're not waiting – like the organ donors with the boxes – to take over their stuff. It's not nice to have to wait for people to die to make a through street. Just put this thing to rest – let us have a little more peace. If you put it in so that people can turn around and leave us along. That is all she wants to say. You know there are accidents with turn arounds.

Mr. Foster remarked that they've heard a lot and he's certainly done enough talking tonight. They've got an item on the table. Obviously there are expectations that there is some action on this whether it's up or down – do we have anyone willing to make a motion?

Mr. Kirk inquired if they should we finish their discussion, as a commission, regarding the temporary/non-temporary decision. Are we all in agreement that it all is or isn't? Is it necessary to have that decision? Maybe they can vote and confirm? Just wanted to open it up again sounds like it was left hanging.

Mr. Foster stated, to discuss the point - what the difference is if it's temporary or permanent? If we look at precedent, we have a dead end street that is as old as me on one side and the other has been that way since 2001.

Mr. Kirk responded that we're saying if it's temporary then a variance is needed. If it's not temporary then you absolutely need a variance.

Mr. Foster stated that item there is an accommodation for the turn around. He looks at it that way as well. There has been an accommodation, and again he's not attorney, but according to his reading of that section, of the code, is that if they made an accommodation for a turnaround—which is what they're proposing it meets the intent of that. It's possible he's way off on that interpretation— what are other people's thoughts on that?

Ms. Lesny-Fleming advised that they were told at the last meeting that they had to make a decision as to whether it was a permanent or temporary dead end street. We were told that was part of our charge. Without a throughoutfare plan she feels a little constrained.

Mr. Foster inquired how they might get access to the throughoutfare plan. Does it exist?

Mr. Barbour responded that it does and they can make whatever they possess available to them. He doesn't know what format it is in.

Ms. Byrnes Maier advised that she thought it was in a big paper map format at the service department on the wall.

Mr. Barbour advised that he thinks it may be on the wall at City Hall in the planning department. He is at a loss to give an accurate answer. It isn't a document that he looks at as part of his daily functioning.

Ms. Byrnes Maier remarked that there were a lot of paper streets, for this City, when it was formed. 25 years ago, when she interned, she remembers taking the old velums and redoing them and there were a lot of paper streets. Those were a part of the original through fare plan.

Mr. Barbour advised that he knows of at least 4 or 5 off the top of his head. He just isn't sure what it is going to show.

Mr. Hoffman remarked that he has a copy of the Master Plan that he has pulled up and it shows that it does show it going through. He's not sure if that's the official throughoutfare plan.

Mr. Foster stated that he believes that they all concur that the master plans does show that, but it's not necessarily the document that is referenced in the zoning code and that is what their concern as a board is. If they do need to deem that a permanent or temporary dead end they really should know if it is a paper street somewhere.

Ms. Byrnes Maier remarked that the question is if they're determining this is a permanent then it would be a cul-de-sac or a variance for a turn around. The default would be if it was a permanent it would be a cul-de-sac is what the code calls for.

Mr. Barbour added or a variance of a cul-de-sac.

Ms. Byrnes Maier confirmed. The default would be the cul-de-sac or it would have to be an approval with a variance to have the hammer head. If this is not deemed that this is a permanent roadway extension then what they have does not require a variance.

Mr. Barbour agreed.

Mr. Kirk remarked that he thinks answering that question first, as a commission, makes sense. To be clear he thinks there is precedence that it is temporary. He thinks if you stand on either side of that street it looks temporary, the master plan shows it as temporary, and he is, personally, fine with it feeling temporary. He just thinks that question needs to be answered by this commission, in agreement, before they make the next decision.

Mr. Foster remarked that what he has have struggled with, personally, as he has thought about these two roadways. This will have been the 4th occurrence of these roadways getting closer to each other. The original construction of the Red Oak Lane to the south, it was extended, then you had it built on the north end pointed towards it and this their 4th occurrence and they're within one parcel of each other. He would have a hard time not considering that a temporary. Since they don't have a definition of what temporary means – we are looking for something to point towards.

Mr. Hoffman advised that he'd like to point out that they also share the same road name. So there are both the south and north portion are called Red Oak Lane it's only Red Oak Ct. when it's east and west. So the name is the same.

Mr. Remein remarked that there are all sorts of streets in Bay Village that are separated. He lives on Russell off of Clague and when he has to give directions he tells them 'Russell off of Clague' otherwise they're up off of Dover looking for him and saying he doesn't exist. The street name has no bearing.

Mr. Kirk inquired what are the rest of the commission's thought were regarding temporary or permanent?

Mr. Remein advised that if it's in the master plan it looks like it's intended to be going through. So the intention is that it will go through someday. That would make it temporary.

Ms. Lesny Fleming advised that the Master Plan is not binding. It is not part of our ordinances, per se, if they are being told that we need to make the decision on if it is temporary or permanent she believes that we should have the full facts in front of us. She thinks it's easy to say, 'well we think

it might be temporary because of these facts', but she thinks it's a serious charge and she wants to have all the information that they need to make that determination which is why she mentioned throughoutfare plan. Whether we like it or not - she is not making any judgement here. The ultimate result here comes down to that determination.

Mr. Maddux advised that he was thinking of the intention of the streets. It feels and seems like they are intended to connect. The history of how these streets have evolved leans towards a temporary evolution. He also looks at how the approving of this makes the condition worse or better on the existing streets. It feels like as far as the delivery of services this approval would improve that situation.

Ms. Davitt advised that she has been thinking about it. To her it seems, in a common sense way, it's is very obviously temporary because they all expect that it is going to go through. As an attorney it makes her hesitant to think that it makes the same kind of sense legally. The law doesn't deal with these abstract hypotheticals. It needs to be one or the other. Without any guidance, to her, it also seem temporary means a very short time – not 10 or 40 years. Legally it is more difficult to determine if it is actually temporary or permanent.

Mr. Foster advised that he has a question of procedure for Mr. Barbour. When does this application expire?

Mr. Barbour advised that he doesn't have the exact date in front of him, but he thinks January 21st.

Mr. Tuck-Macalla advised that their 90 days would be up on 2/17/20.

Mr. Foster inquired if should this be deferred to the next meeting so that this information could be provided and it would still be within the timeframe – correct?

Mr. Tuck-Macalla advised that would be correct.

Mr. Barbour confirmed this is a 90 day process and the unusual timeframe is 60.

Mr. Foster stated that if he is hearing, and he doesn't want to speak on behalf of the board, but is there a coconscious that he's hearing that people want to see the throughoutfare plan to determine if a true variance is needed for this?

Mr. Remein inquired if the throughfare plan a legal document that the city has promulgated saying that this is what we want?

Mr. Barbour yes it is a document that is created under our codes.

Mr. Kirk inquired when was the document created and when was it last updated?

Mr. Barbour advised he doesn't have the answers to that.

Mr. Kirk restated his question - is it a living breathing document or is it a document that was created once?

Mr. Barbour advised that it is supposed to be a living breathing document. So when they make a change to a road or create a new road, like Crestview for example, then that should show up on throughoutfare plan. If this gets approved then the extension should show up on the throughoutfare plan. That is what it is supposed to happen.

Mr. Foster asked his question again – is that a coconscious among the board members that we want to see it before acting?

General board consensus.

Motion by Mr. Foster, **Second** by Mr. Remein, to defer this to the next meeting. In the interim if the City can provide the planning commission with a copy of the throughoutfare plan.

All in favor: 7 yeas, 0 Nays

Mr. Barbour advised that he would figure out the format and the best way for them to get a copy or make it available.

Ms. Byrnes Maier advised that she had no council update.

Motion by Mr. Kirk, **Second** by Mr. Remein, to approve the minutes as prepared and distributed for the December 16, 2020 meeting.

All in favor: 7 yeas, 0 Nays

There being no further discussion, the meeting adjourned at 9:40 p.m.

Jeff Foster, Chairman

Lauren Oley, Secretary