

## PLANNING COMMISSION MEETING

*June 10, 2010*

The Planning Commission convened in Courtroom No. 1 at City Hall for their regular meeting. Vice-Chairman Komjati called the meeting to order at 7:30 PM. He asked the secretary to call the roll. Members in attendance were, Mr. Andrew Eade, Ms. Christine Shoop, and Vice-Chairman David Komjati. Absent were Mr. Brian Temming and Chairman Thomas Fitzgerald. Also present were, City Manager Rita McMahon, Assistant City Manager/Community Development Director Douglas Lewis, City Planner Russ Schaedlich, Assistant Law Director James Lyons, and Secretary Lynn White.

### MINUTES:

Vice-Chairman Komjati asked if there were any additions or corrections for the Planning Commission Meeting Minutes of May 13, 2010. There being none, he asked for a motion. Motion by Ms. Shoop, seconded by Mr. Eade to approve the Planning Commission Meeting Minutes from May 13, 2010 as submitted. All members present said "aye". Motion carried.

### TABLED BUSINESS:

**Preliminary Plat Approval** of 49 residential lots known as Heisley Park Residential Subdivision Phases XIV and XV.

Vice-Chairman Komjati indicated a motion was necessary to remove the Preliminary Plat for Heisley Park Residential Subdivision Phases XIV and XV from the table. Motion by Ms. Shoop, seconded by Mr. Eade to remove Preliminary Plat Approval for Heisley Park Residential Subdivision Phases XIV and XV from the table. On roll call, Mr. Eade, Ms. Shoop, and Vice-Chairman Komjati answered "yes". Motion carried.

Vice-Chairman Komjati asked if there was anyone present to speak on this issue. There being none, he asked if the City had any comments on this item. Mr. Schaedlich indicated his subdivision review report outlines the changes that had been made to the original submission of the preliminary plat. In addition, he explained that the City and Developer are negotiating the open space requirements. Mr. Schaedlich indicated the City is comfortable with the approval of the preliminary plat at this point. He stated the City is recommending that the Developer provide the hydro-geological studies. This can be done with the submission of the Final Plat.

Vice-Chairman Komjati asked if there were any other comments or questions. There being none, he asked what happens if the hydro-geological study is not favorable for development. Mr. Schaedlich replied that the study done for Heisley Park Phase XII came back with good data. The staff feels that this area will be similar to those findings. The developer will need to file for a final plat prior to completion of the subdivision and anything that needs to be addressed in regards to the study can be done then.

There being no further comments, Vice-Chairman asked for a motion. Motion by Ms. Shoop, seconded by Mr. Eade to approve the Preliminary Plat for Heisley Park Residential Subdivision Phases XIV and XV consisting of 49 residential lots. There being no further discussion, the secretary was asked to call the roll. On roll call, Ms. Shoop, Mr. Eade, and Vice-Chairman Komjati answered "yes". Motion carried.

### NEW BUSINESS:

Vice-Chairman Komjati indicated there was no New Business and moved onto the Administrative Report.

### ADMINISTRATIVE REPORT:

Vice-Chairman Komjati read the notice under the Administrative Report.

#### **Walnut Ridge Condominium Project** – Preliminary Plat Extension Request

Vice-Chairman Komjati asked Mr. Tom Winfield to give his name and address for the record. Mr. Winfield stated that he lives at 7745 Brakeman Road, Leroy Ohio. He indicated his wife owns the

property on Walnut Street in Painesville for which the extension is being requested.

Mr. Winfield indicated that after reading through the Staff Report for his request, he was made aware that he needed to supply proof of his efforts to resolve the issue with the MetroParks. He went through with the Commission the items that he submitted for the record. They included correspondence from the Lake County Auditor's Office; correspondence between Zicarelli & Martello (legal counsel for Lake MetroParks) and Maguire & Schneider (legal counsel for Mr. Winfield); minutes of the Lake MetroParks board meetings; and correspondence between Lake MetroParks and Mr. Winfield. Most of the items submitted related to the disagreement among the two parties and their property line boundaries.

Mr. Winfield presented a plan that was used in the creation of the MetroPark bikeway project that runs from Concord Township through the City of Painesville. He believes that the plan used was adequate for placing asphalt on top of the old railroad track area however; it should not be used for land survey purposes. He commented on various individuals that he has spoken to and the fact they agree with his argument. He also stated that he has many surveys that have been done on that property. Mr. Winfield stated that Mr. Tim Hadden of CT Consultants would attest to the fact the survey he has is accurate.

Mr. Winfield indicated that he has attended the MetroParks Board Meetings and he was told to deal through their attorney only. He believes the MetroParks will not give him an answer in favor of his request. He stated that at this point he would like to sell the property. Mr. Winfield indicated that he could answer any questions in regards to his request.

Ms. Shoop asked why an extension would be beneficial to Mr. Winfield in selling the property. Mr. Winfield replied that the appraisal value of the property is more with the condominium plan in place. The engineering has already been done and the plan allows for twenty-four condominium units. He stated that he is requesting the extension and is willing to cooperate with the City.

Mr. Lyons questioned Mr. Winfield as to what he means by cooperate. Mr. Winfield replied that the only reason not to allow the extension would be due to law changes, regulation, or ordinance changes. He stated that there have not been any since his original request. Mr. Winfield indicated that he is waiting for the economy to turn around and would like the one-year extension.

Mr. Lyons state he would like to define Mr. Winfield's issue for the Commission. He stated that Mr. Winfield indicated he could get the land to allow for an entryway. Mr. Winfield said yes. Mr. Lyons commented then the boundary line issue is not holding up Mr. Winfield's project. Mr. Winfield responded that would force him into another legal endeavor to purchase the land. Mr. Lyons challenged Mr. Winfield's statement. Mr. Winfield restated the property owner has agreed to cooperate to sell her property to him if necessary; it is not a done deal.

Mr. Lyons continued that if Mr. Winfield were to obtain the property then he would need to provide a new preliminary plan or provide an amendment to the current plan. Mr. Winfield stated that would be a minor adjustment since the lot would only be two and one-half feet wider on this one portion.

Vice-Chairman Komjati asked if Mr. Winfield had approached the MetroParks and the possibility of buying the land. Mr. Winfield indicated that he has and they cannot allow a purchase or a trade on the property. Vice-Chairman Komjati stated that if this is extended for another year, what is going to change, what is the benefit?

Mr. Winfield responded that if the project does not receive another extension it loses value. He stated that if this is not a substantial engineering problem or zoning issue to the City; it should be granted so that he can recoup the money he has put into the project. Vice-Chairman Komjati stated that from his point of view, the project has been granted an extension for the last three years and this is the fourth extension request. He wondered when the issues would ever be resolved so Mr. Winfield can move on. Mr. Winfield indicated that he believes that once the economy picks up, he will be able to move forward. There was discussion between Mr. Winfield and Vice-Chairman Komjati regarding this issue being moved off the table.

Mr. Lyons commented that the issue is not "on the table". This is an administrative report in which the Commission needs to determine whether to grant Mr. Winfield an extension on his previously approved preliminary plat. Mr. Lyons stated that last time Mr. Winfield was before the Commission; Mr. Winfield made a point that he was having a dispute with the MetroParks. The Commission

placed a condition on the extension that they wanted to see some significant progress in terms of resolving the dispute. Mr. Winfield has made his statement as to what progress has been made and has submitted documentation regarding what has been done. The Commission can consider that information or they can just look at the request and give a straight up or down vote. This property has been frozen since 2006 in terms of the preliminary and final plats. Mr. Winfield is requesting an extension to 2011 or 2012. Mr. Lyons stated that the request is being asked on two bases; one the economy, the other is he still has the dispute with the MetroParks.

There was continued discussion about the surveys in question. Mr. Lyons explained to the Commission the process that would allow Mr. Winfield to receive a Final Plat approval from the City. Mr. Lyons stated that if Mr. Winfield were to resolve the property line dispute with the MetroParks today, he would still need to have an extension on his preliminary plat.

Mr. Lyons cited the provision of the code that deals with Mr. Winfield's request. The code states "The final plat shall be filed with the Planning Commission not later than twelve months after the date of approval of the preliminary plat; otherwise it will be considered void unless an extension is requested by the developer and granted in writing by the Planning Commission." Mr. Lyons stated it does not limit the number of times an extension can be granted. He stated that he has asked Ms. McMahan if she has any recollection of doing this in the past.

Ms. McMahan indicated that she remembers there have been instances that have received two extensions, but not three. Vice-Chairman Komjati asked what the impact to the City is if another extension is granted. Mr. Lyons stated from a legal standpoint, if there are changes made to the Codified Ordinances relating to the plat requirements this would be grandfathered. Ms. McMahan added that City Council has asked for adjustments to the ground water geotechnical requirements due to issues in Heisley Park Subdivision. She indicated those suggested changes would be something the Commission would vote on and recommend to Council for adoption in the near future.

Mr. Winfield explained for the Commission the issues that he has currently with storm water drainage due to the installation of the bike path. He stated that if he were to build his project there would be no water issues. It would improve the drainage of the area. Mr. Lyons asked if the project had basements. Mr. Winfield stated yes, there are basements. He stated that the area was used as a dump in the past. He believes that it would be worse if the project were not built. Mr. Lyons clarified that it is Mr. Winfield's opinion that building the project would improve the drainage. He verified that there have not been any geotechnical surveys done for the area. There was continued discussion about the storm water requirements that City Council would like to see in place.

Ms. Shoop asked if the extension is not granted to Mr. Winfield, could he start all over. Ms. McMahan indicated that he could submit the same set of drawings and come before the Commission to start the process all over again. Since there have not been any changes since the original submission he would be approved. Mr. Winfield stated that he does not believe this would be approved again.

Vice-Chairman Komjati stated that the argument of the economy does not influence the Commission since the Commission has no control over the economy. He feels the Commission has been very cooperative in granting the previous requests. He stated that this should not be prolonged any further. Vice-Chairman Komjati commented that he also believes this project should go through the new storm water regulations that City Council wants in place. If this project were built without having to go through those regulations, it would be a disservice to the community.

Ms. Shoop asked if an extension is granted, could the geotechnical study be a stipulation added to the extension so this would have to go through the current regulations if they are adopted. Mr. Lyons indicated that he does not feel comfortable with that type of stipulation. The ordinance states either extend it or deny it. This would be placing stipulations on his plat that has already been approved. There was discussion about possible conditions for the project with Mr. Winfield. Ms. McMahan indicated that there has been surface water flooding issues in that area due to Tiber Creek.

There being no further discussion, Vice-Chairman Komjati asked if there was a motion. Motion by Ms. Shoop, seconded by Mr. Eade to accept the Preliminary Plat Extension for Walnut Ridge Condominium Project for one-year. There being no further discussion, the secretary was asked to

call the roll. On roll call, Mr. Eade, Ms. Shoop, and Vice-Chairman Komjati answered “no”. Motion failed.

Mr. Lyons stated that Mr. Winfield has the right to file an appeal on this decision to the Court of Common Pleas.

### **OTHER MATTERS THAT MAY PROPERLY COME BEFORE THE PLANNING COMMISSION**

The Commission was informed of an upcoming Northeast Ohio Planning Workshop. The workshop will have discussion of planning issues. The Commission was instructed to indicate to the Secretary of their interest.

### **ADJOURNMENT**

There being no other items to come before the Planning Commission the meeting was adjourned.

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Lynn M. White, Secretary

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David Komjati, Vice-Chairman