

PLANNING COMMISSION MEETING

September 17, 2009

The Planning Commission convened in Courtroom No. 1 at City Hall for their regular meeting. Chairman Fitzgerald called the meeting to order at 7:30 PM.

Members in attendance were, Ms. Christine Shoop, Mr. David Komjati, and Chairman Thomas Fitzgerald. Absent were Mr. Andrew Eade and Mr. Brian Temming. Also present were, City Manager Rita McMahon, Assistant City Manager Douglas Lewis, City Planner Russ Schaedlich, Assistant Law Director James Lyons, and Secretary Lynn White.

MINUTES: Motion by Ms. Shoop, seconded by Mr. Komjati to approve the Planning Commission Meeting Minutes from August 13, 2009 as submitted. All members present said “aye”. Motion carried.

TABLED BUSINESS:

Chairman Fitzgerald indicated a motion was necessary to remove the tabled business. Motion by Ms. Shoop, seconded by Mr. Komjati to remove the Preliminary Plat Resubmission for Windmill Estates from the table. All members present said “aye”. Motion carried.

Preliminary Plat Resubmission for Windmill Estates Residential Subdivision – consisting of 181 Single Family Lots located between Heisley Park Subdivision and Shamrock Boulevard.

Chairman Fitzgerald asked the Staff to give a report on this item. Mr. Russ Schaedlich explained to the Commission that at the meeting of August 13, 2009 a revised Preliminary Plat was presented with a date of 08-09-09, which is the plat the Commission received in their packet. Since that plat was submitted, the Staff has met with the developer and engineer, reviewed the stipulations that were prepared to see if there was any negotiation room or revisions possible from those discussions. The developer indicated they would consider a revision of the plat based on the City’s recommended stipulations. Mr. Schaedlich indicated he had heard back from the developer that they would like to move forward with the plat that was submitted at the August 13, 2009 meeting.

Mr. Schaedlich suggested he go through each of the stipulations with the Commission as they review the Plat. The stipulations are as follows:

1. That Ruby Lane shall be constructed with a connection between Shamrock Boulevard and Sapphire Drive and will be a permanent connection.
2. That the section of Elizabeth Boulevard from Sapphire Drive to Shamrock Boulevard could be put in as a temporary connection to Shamrock Boulevard, but at such time as relocated Jackson Street is constructed, this connection shall be removed. The Developer shall post a performance bond in the amount of 100% of the removal cost for this section of roadway.
3. That the proposed right-of-way as indicated on the Preliminary Plat of 8/11/2009 shall be donated by the Developer to the City of Painesville for the purpose of constructing relocated Jackson Street.
4. The City would require that at such time as relocated Jackson Street is built, Block A shall be removed and the connection of Garnet Way to relocated Jackson Street be built and that a performance bond shall be posted in the amount of 100% of the construction cost. The rationale for this is for the subdivision to have at the least two ways of ingress/egress.
5. There are about twelve sublots (60 – 72) on the south side of Shamrock Boulevard that would have access to Shamrock Boulevard. The City would like those lots to be deed restricted to restrict access to Shamrock Boulevard. The access to those lots would only be from Sapphire Drive.
6. That the Developer shall dedicate accessible, usable open space acres for such purpose or make payment in lieu of the requirements as required by Section 1113.22 of the Painesville Codified Ordinances. Retention pond areas shall not be considered accessible, usable open space. This is a requirement by code for all subdivisions and has been used in the past to enhance recreation activities.

7. That the area to the south of sublots 175 through 179 and north of the relocated Jackson Street as shown on the preliminary plat dated 8/11/2009 shall not be developed with access to the relocated Jackson Street. Access shall be by means of Garnet Way so as not to create a traffic issue so close to the intersection.

8. The Developer shall perform and provide hydrogeologic and storm water reports for the development site. These reports should be submitted as each additional phase is constructed. There are currently issues occurring in the Heisley Park Subdivision relating to drainage and high water tables.

9. That the items listed on the City Engineer/City Planner Memo dated September 1, 2009 (090109) be addressed to the City's satisfaction. Most of those items have been handled.

Mr. Schaedlich continued by stating that as an addendum to the City Engineer/Planner memo there are some comments that were added. He stated there were six items listed. They are, 1) The elevation of Shamrock Boulevard must be indicated, especially the area of the approach for the future railroad overpass; 2) Please show utilities located on Shamrock Boulevard, especially the electrical boxes as requested by the Electric Division; 3) The Fire Chief would like the fire hydrant indicated in front of subplot 80 on Elizabeth Boulevard to be relocated to subplot 81 to be nearer the intersection of Elizabeth Boulevard and Opal Court; 4) The Fire Chief would like the fire hydrant indicated at sublots 4 and 5 on Opal Court relocated to subplot 6 on Opal Court; and the fire hydrant indicated at sublots 9 and 10 on Opal Court relocated to subplot 11 on Opal Court to provide better spacing; 5) The Engineering Department provides preliminary approval subject to the review and approval of the site's hydrogeologic and storm water management reports; 6) Please provide a Title/Signature page.

Mr. Schaedlich indicated the Staff recommendation with all this material is to approve the preliminary plat with the stipulations as noted. He asked the Commission if there were any questions or comments. Ms. Shoop questioned the stipulation for sublots 175-179 not having access to Jackson Street and the difference between those lots and lots 166-174. Will those lots not also need the same restriction? Mr. Schaedlich indicated the reference to lots 175-179 is due to the vacant land behind them. The thought is to allow only access from Garnet Way.

Mr. Schaedlich noted to the Commission that the Planning Commission's recommendation will be forwarded to City Council and if City Council were to adopt the recommendation, the developer would be submitting a final plat to the Commission at which time the subdivision will be reviewed again.

Chairman Fitzgerald asked if there were any other comments or questions. There being none, he asked the applicant to address the Commission.

Mr. Rick Osborne, Jr. thanked the Commission for the opportunity to present his plat and apologized for not being at the last meeting. He stated they have been trying to develop this piece of property for a number of years. In March 2008, they received approval of their preliminary plat and at that time there was a lot more emphasis on the interchange being done sooner. The interchange is an unsure thing and many of the stipulations in the recommendations are based on that fact. He stated they are set on receiving a vote, yes or no, but they do not feel they should be penalized on something that may or may not happen. One recommendation that the developer has is the possibility of selling the land or having the City take the land where they believe the connections will be placed. Mr. Osborne indicated they could live with some of the stipulations but not all of them. He stated he met with Ms. McMahon and it was stated they would consider having a new design created if a potential buyer for the land was identified. Mr. Osborne indicated they want to proceed with what they have submitted.

Ms. Jody Tomaszewski of Dworken and Bernstein stated as Mr. Osborne indicated, the real issue is the stipulations related to the possible reconstruction of Jackson Street. She went through the Staff Recommendations indicating if they were agreeable or not. Items number one through four are not agreeable; number five and six are agreeable; number seven is not agreeable; number eight is agreeable; and number nine is agreeable as long as they are not a repeat of the stipulations listed above. Ms. Tomaszewski stated the listings of the new stipulations (addendum) are all agreeable as listed. In looking at the plan that was submitted, it seems the one way to solve this problem is that if sometime in the future Jackson Street is relocated that is where Ruby Lane to Shamrock could be built. One possible solution is, she can see the City being hesitant in regards to taking land by eminent domain or buying land for the whole reconstruction that may or may not happen, to buy lot

number 69, which will probably solve that problem. Ms. Tomaszewski indicated that she could answer any questions from the Commission.

Ms. Shoop asked that if the City were to buy the lot, the installation of the connection to the development would be the City's responsibility. Mr. Osborne and Ms. Tomaszewski replied yes.

Mr. Osborne stated they might be able to include the construction of the connection to Route 44, the bridge into Jackson, as part of the project.

Ms. Shoop stated that the stipulations that the applicant is opposed to all relate to the proposed relocated Jackson Street. She commented that she can see the opposition in the fact that if the project does not happen, however, what about the reverse and it does happen. Ms. Shoop replied that she is trying to get a handle on the reservations of the applicant. She believes the situation is more important from the City's side. When the road is relocated there then is the issue with the development not conforming to the standards the City has put in place. She commented about the current situation at Diamond Center and how bad the traffic issues have become.

Ms. Tomaszewski stated that each party has different interests in this case. The developer does not want to be penalized by having to design his project on what may or may not happen in the future. As far as changing things in the event that sometime down the road this relocation did occur, by not developing lot 69 it really would not be that much to change other than putting in the connection.

Chairman Fitzgerald inquired about Elizabeth Boulevard being left as a connection to Shamrock. Mr. Osborne responded that he would like Elizabeth Boulevard kept on the plan and Ruby Lane as a connection would need to be eliminated. He stated the biggest question is not knowing what is happening with Jackson Street. He commented that if he wanted to design more apartments in that area, the Commission is not allowing it and that is not fair.

Mr. Lyons asked for clarification of what Mr. Osborne said. Mr. Osborne stated that if he wanted to design apartments next to the existing apartments across from Shamrock he would not be allowed to do it. With the possibility of the road going in there at that point you would have to make a decision to purchase the land or not. We just do not show anything there and the situation does not change at all except there is no building there.

Mr. Lyons asked if it would be possible for the applicant to state the specific objection to each one of the stipulations they do not agree with.

Ms. Tomaszewski stated in regards to stipulation number one, that Ruby Lane shall be constructed with a connection to Shamrock Boulevard; the objection is that there is already a connection at Elizabeth Boulevard and there is no need for a connection at Ruby Lane.

Mr. Lyons stated that at the previous meeting it was discussed that if the interchange ever does go in the Elizabeth Boulevard connection would not be allowed due to ODOT regulations. He commented that even with that fact, the developer still wants to design the development with the connection onto Shamrock Boulevard from Elizabeth.

Ms. Tomaszewski responded, going back to lot number 69, if that were to occur then it is our understanding that the Elizabeth Boulevard and the Shamrock/Jackson intersection would be too close together, so that will have to be relocated and that relocation would happen at Ruby Lane where lot 69 is located. She commented that by tying up lot 69 and by not allowing development you would be ready for the "if" were Jackson Street were to be built. This would lessen the City's liability to have to take a house by eminent domain versus putting the roadway on a parcel you have already acquired.

Ms. Tomaszewski read that stipulation number two states that the section of Elizabeth Boulevard between Garnet Way and Shamrock Boulevard be approved as a temporary connection to Shamrock Boulevard, but at such time as relocated Jackson Street is constructed, this connection shall be removed. The Developer shall post a performance bond in the amount of 100% of the removal cost for this section of roadway. This is the same reason as just discussed. The fact that the developer is being asked to incur expense in the form of a bond for something that may not happen is the objection.

Ms. Tomaszewski read stipulation number three, that the right-of-way of the proposed relocated Jackson Street, as indicated on the Preliminary Plat of 8/11/2009, shall be donated by the Developer to the City of Painesville. She stated they felt it is premature to talk about this at this point. If it does

happen then the developer will discuss donating the land; but at this time, the developer is not willing to make that donation.

Ms. Tomaszewski read stipulation number four, that a performance bond shall be posted in the amount of 100% of the construction cost to build the connection of Garnet Way from Elizabeth Boulevard to the relocated Jackson Street. At such time as relocated Jackson Street is built, then Block A shall be removed and Garnet Way shall be connected to relocated Jackson Street. This goes back to the same reason as discussed in items number one and two and again the developer is being asked to incur expenses in the form of a bond for something that might not happen. In addition, the timeframe is also an unknown.

Ms. Tomaszewski indicated that they are in agreement with stipulation number five and number six. Stipulation number seven, that the area to the south of sublots 175 through 179 and north of the relocated Jackson Street as shown on the preliminary plat dated 8/11/2009 shall not be developed with access to the relocated Jackson Street. Access shall be by means of Garnet Way. She stated the objection to this stipulation is it is premature since it is unknown as to what is happening with the roadway and it should be discussed at the time the plans are submitted for that property.

Ms. Tomaszewski indicated that they are in agreement with stipulation number eight and number nine as long as they are not duplicates of the stipulations already listed.

Chairman Fitzgerald stated that, in his opinion, this plat may or may not happen as well. He indicated that the Commission's job is to plan for the future for what they believe may happen. He stated that he does not understand why this particular lot at Ruby Lane cannot be set aside and not sold until we see that Jackson goes in. He commented that he did not see why the City should have to purchase a lot. Mr. Osborne replied that he does not see why he should have to sit on a lot either. With the state of the economy, donations of this type are not acceptable.

Mr. Komjati asked what the financial impact on a developer would be based on the City's stipulations. Mr. Osborne commented that it is unknown unless there was an offer to purchase the land. Ms. Tomaszewski stated it would be in addition to the cost of the bond or the estimated removal costs for one part and construction costs for another.

Ms. Shoop stated that if everything goes forward, there is no development on lot 69, and it needs to be moved, will that lot at the end where Elizabeth is become a lot? Is that a buildable lot or is it too narrow?

Mr. Lyons asked if there was one stipulation that overrides the other stipulations listed in terms of being objectionable or are they all equally weighted. Mr. Osborne stated that they are all tied into the relocation of Jackson Street, so they are equal.

Mr. Lyons asked if a time limit were placed on the stipulations would the developer be willing to reconsider. Mr. Osborne replied no, they would like to do it the way it is proposed.

Chairman Fitzgerald asked what the timetable is for construction of the development. Mr. Osborne replied that they would like to put in the first phase in the spring. There was discussion as to the reasoning behind the area chosen for phase one. Mr. Osborne indicated the connection to Elizabeth through the Ryan Homes subdivision and the way it works with the utilities. They work their way to the north since the sanitary needs to be installed and the sanitary can be fed that way. It gets them closer to Shamrock quicker. There was discussion regarding the utilities and how they are designed for that area.

Chairman Fitzgerald inquired about the time frame of when the lots will be put up for sale. Mr. Osborne indicated they believe mid to late fall of next year they will be selling lots. The salable lots would begin at Elizabeth and Garnet Way. Chairman Fitzgerald inquired about the remainder of the development and when those lots would be starting. Mr. Osborne replied they would build based on the market. They will continue as long as they sell.

Chairman Fitzgerald suggested removing the top lots that are adjacent to Shamrock Boulevard out of phase one. Those lots could be left for future phasing so as to see the development of the Jackson Street relocation and the interchange. Mr. Chorbha indicated the reason those lots are included is due to the sanitary sewer that is located near that street. There will be an extension made to the sewer located in that vicinity. Chairman Fitzgerald restated his reasoning for changing the lots around within the phasing of the development to allow the possible relocation of Jackson to occur so there are no issues with those lots located in that area. Mr. Osborne stated the connections to the

utilities are vital to the development. Chairman Fitzgerald replied that some of the lots are more critical to the City because they close off any possibility of Ruby Lane going through, unless the City approves the plat with these stipulations and goes to City Council.

Ms. McMahon addressed the Commission. She stated the applicant's provision of purchasing lot 69 does not meet the standard right-of-way requirements. The width of the lot in the rear portion is only 57-feet, 60-feet is the minimum R-O-W (plus turnouts).

Ms. Shoop questioned what would be done if the two lots were purchased, would this area be built on or is this not a buildable lot, would it revert back to the developer, or would it be vacated and given to the other property owners. Ms. Tomaszewski stated that would be a dedicated street and the lots would not be vacated. Mr. Osborne stated that if the City were to vacate the property it would be divided to the adjoining property owners.

Mr. Komjati asked what are the delays or problems with the relocated Jackson Street project.

Ms. McMahon responded that project is in design currently. This is a County Engineer project and it has gone through the preliminary analysis that includes review and design. This project has been placed on the TIP (Transportation Improvement Plan for the region) through NOACA, which makes it eligible for Federal Funding. The County Engineer has requested an earmark on the next highway bill for that project. Ms. McMahon stated this past Tuesday the City also submitted a Federal Grant Request for this project through the stimulus dollars to build the relocated Jackson Street and the bridge over the railroad tracks as part of the transportation for greater economy recovery grant. The County Engineer has moved forward from the preliminary concept stage to the next stages that are necessary to start design.

Mr. Komjati asked what type of timeframe this will take in terms of getting approvals for the grants. Ms. McMahon explained that they are attempting to get state and federal money. In order to get these dollars, except if you are being earmarked or stimulus money, you have to follow the Ohio Department of Transportation's fourteen-step process. Ms. McMahon explained that the project is at step four. Steps nine through fourteen are construction steps, which means about halfway through the planning process. It can be about three to four years out since NOACA is allocating dollars now for 2013 – 2014.

Chairman Fitzgerald asked if 2014 would be when the Jackson Street project will be started. Ms. McMahon replied that if the project goes through traditional funding mechanisms, yes, if it is earmarked by the Federal Government then it goes to the top of the list and could go next year. If it gets the Stimulus Funds, it will be done in 2011. She stated by and around February 15, 2010 the City should know whether or not the project is eligible for Stimulus Funds and/or the earmark money.

Ms. Shoop stated that the suggestion of taking this issue off the table for a while or putting it in a different phase in terms of the earmark seems to be reasonable. There was discussion in regards to the applicant accepting a proposal of this nature, waiting to see if the Federal money will be granted to move forward with the project.

Mr. Osborne stated that he does not see this being a problem but the issue with the right-of-way where Jackson might be is an issue in just leaving that land vacant since the City will want that land. There was discussion of the possibility of developing that area and if the Jackson Street project is approved then the possibility is a mute point. Mr. Osborne indicated the biggest issue would be to eliminate stipulation number three in regards to the donation of the right-of-way. Mr. Lyons asked if the developer would have a problem giving the City an option to purchase that property up to a certain period of time so if there is a multi-family development planned for that land the City would have the first choice to purchase. Mr. Osborne asked if the property would be taken by eminent domain. Ms. McMahon responded no it would be an agreement with the City giving the option to purchase, First Right of Refusal. Mr. Osborne indicated that probably not, he would rather the City just purchase the property. Mr. Lyons asked for clarification. Mr. Osborne responded he would like the City to buy the land right now rather than giving the option to purchase.

Mr. Lyons stated that if stipulation number three is eliminated, are all the other stipulations acceptable. Mr. Osborne indicated that stipulations one and two would not apply. Mr. Lyons stated one would still apply since it indicates a bond is necessary to remove the connection at Elizabeth Boulevard if Jackson Street project goes forward. There was discussion regarding the stipulations and which stipulations the developer was able to accept.

Chairman Fitzgerald asked if the proposed items were acceptable to the City. Ms. McMahon replied that she is not prepared to address this issue this evening. Mr. Lyons suggested the Commission adjourn to executive session to discuss how to proceed. Chairman Fitzgerald inquired how this is accomplished with other items on the agenda. Mr. Lyons asked that the Commission motion to go into executive session after completing the next item on the agenda.

Motion by Ms. Shoop, seconded by Mr. Komjati that the meeting be adjourned to executive session after the Administrative Report of Station 44 Condominium Development was discussed. The secretary was asked to call the roll. On roll call, Ms. Shoop, Mr. Komjati, and Chairman Fitzgerald answered "yes". Motion carried.

ADMINISTRATIVE REPORT:

Final Plat for Station 44 Condominiums – Phase 1 - consisting of two units.

Chairman Fitzgerald asked if the City Administration had any additional comments on this item other than the submitted Staff Reports. Mr. Schaedlich indicated the City Staff had reviewed the Final Plat for Phase 1. He stated the legal description is satisfactory and the private drive and the building have been constructed. Mr. Schaedlich commented that approval is recommended.

Chairman Fitzgerald asked if there were any comments or questions from the Commission. There being none, he asked for a motion. Motion by Ms. Shoop; seconded by Mr. Komjati, to approve the Final Plat for Station 44 Condominium for Phase 1 as submitted. There being no discussion, the secretary was asked to call the roll. On roll call, Mr. Komjati, Ms. Shoop, and Chairman Fitzgerald answered "yes". Motion carried.

The meeting was adjourned at 8:18 PM for the Executive Session.

Motion by Ms. Shoop, seconded by Mr. Komjati to move out of executive session and into an open meeting. All members answered, "yes". Motion carried.

Chairman Fitzgerald indicated the Commission has discussed the issue with the City and the Commission feels that we are not able to vote at this time. The Commission feels there needs to be further discussion with the City on this issue. The Commission is willing to hold a Special Meeting on this item next Thursday if the applicant is willing. The other option is to wait until the regularly scheduled meeting in October.

Mr. Osborne asked what does the Commission feel will change within one week. Mr. Lyons indicated the City would like to consider some of the comments made at an administrative level and the possibility of changing the City's recommendations on this item.

Chairman Fitzgerald stated the Commission would like to table the item. The developer needs to decide if a special meeting is necessary next week or if waiting for the October meeting is acceptable. Mr. Osborne indicated he would rather meet next week. He asked if there was any chance of the Commission voting this evening. Chairman Fitzgerald indicated the Commission is not prepared to vote.

There being no further discussion, Chairman Fitzgerald asked for a motion. Motion by Ms. Shoop; seconded by Mr. Komjati, to table the Preliminary Plat Resubmission for Windmill Estates for one week (September 24, 2009 at 6:30 PM). On roll call Ms. Shoop, Mr. Komjati, and Chairman Fitzgerald answered "yes". Motion carried.

OTHER MATTERS THAT MAY PROPERLY COME BEFORE THE PLANNING COMMISSION

There were no other items to come before the Planning Commission.

ADJOURNMENT

There being no further business, the meeting was adjourned.