

PLANNING COMMISSION MEETING

November 10, 2010

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. He asked the Secretary to call the roll. Members in attendance were, Ms. Christine Shoop, Mr. David Komjati, and Chairman Fitzgerald. Absent were Mr. Andrew Eade and Mr. Brian Temming. 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:

Chairman Fitzgerald asked if there were any additions or corrections for the Planning Commission Meeting Minutes of September 9, 2010. There being none, he asked for a motion. Motion by Ms. Shoop, seconded by Mr. Komjati to approve the Planning Commission Meeting Minutes from September 9, 2010 as submitted. All members present said "aye". Motion carried.

NEW BUSINESS: (Public Hearing Item)

REFUSAL NO. 2193 *CONDITIONAL USE PERMIT REQUEST*

Applicant: David Nofeiger
 Owner: Jeffrey W. Joughin
 Location: 218 East Main Street (Parcel Number 15-B-001-C-00-018-0)
 District: B-3 Central Business District
 Section: 1143.06 (a)

The City of Painesville has received an application from David Nofeiger for a Conditional Use Permit. The applicant is proposing a Tattoo & Piercing Supply Shop at 218 East Main Street (Permanent Parcel Number 15-B-001-C-00-018-0). The property is located in the B-3 Central Business District. Section 1143.06 (a) requires a conditional use permit for uses that are not specifically listed in the zoning code as a permitted use. A similar use determination is being requested by the Planning Commission.

Mr. David Nofeiger, 164 Birch Road, Painesville Township addressed the Commission. He explained that he would like to open a Tattoo & Piercing Supply Shop at 218 East Main Street. He stated that this is not to be confused with a tattoo or piercing parlor. There will be no services provided. It will strictly be a retail operation, selling directly to tattoo artists and parlors. Mr. Nofeiger indicated he chose this location because he feels that it is strategically outside of the higher crime area but still inside the populated area of Painesville. He believes that he will do a good business in this location since the nearest competition is in Eastlake. There will be three employees and they will also be offering deliveries. The next nearest competitor for this is on the Westside of Cleveland. He stated this location is half way between Ashtabula and Cleveland. Mr. Nofeiger commented that he knows Painesville since he grew up here. He stated he would like to give something back to the City.

Chairman Fitzgerald asked if members of the Commission had any comments. Mr. Komjati asked what Mr. Nofeiger meant by outside the crime area. Mr. Nofeiger stated he knows the City and the north end statistically has more crime than the south end. Mr. Komjati asked if there was a potential for crime at this proposed business. Mr. Nofeiger replied that he does not want crime. Mr. Komjati clarified by asking if this type of business has a propensity for more crime than a candy shop. Mr. Nofeiger answered yes. He stated that it comes down to his responsibility as a business owner to make a name for himself, and that he will not allow that to happen at this location. He stated that he would not cater to criminals. He will be selling to the public and the clientele will be tattoo and piercing parlors with reputable business owners.

Ms. Shoop indicated the staff report states the applicant has expressed that, although there will be a retail component, the focus of the business will be supplying existing tattoo parlors in the Lake, Geauga and Ashtabula County area. She asked if there a wholesale end to the business. Mr. Nofeiger responded no, he purchases wholesale. Ms. Shoop asked if the entire business would be strictly retail. Mr. Nofeiger commented yes.

Mr. Komjati asked about the hours of operation. Mr. Nofeiger replied the business hours would be 9:00 AM to 9:00 PM. His sister will be working from 9 AM to 2:30 PM and his aunt will work the second shift to closing. These hours will be for Monday through Friday and Saturdays he has not decided the times, however, the Saturday hours he would be the one working those hours. Mr.

Nofeiger indicated that his third employee would be a delivery person whose hours will be determined by demand of the product.

Mr. Komjati commented that the application stated there may be some items that are non-piercing or non-tattoo related. He asked what those items would be. Mr. Nofeiger indicated that would be jewelry; earrings, studs, necklaces.

Chairman Fitzgerald asked the secretary if there were any correspondence relating to this item received by the City. The secretary indicated a letter was submitted by Pamela J. Morse of Painesville Furniture and Carpet. The letter was read for the record.

It has come to my attention that there is a request for a variance within the Historic Downtown Painesville City shopping district. As a second generation business owner within this district I am writing to express my grave concerns as to the validity of its purposed business as a positive influence within the district and with the overall master plan of Painesville City. I am concerned about the types of customer that this would bring to our city and how our existing customers would view this business. My goal along with my employees and their families that we support through our business is for a safe, healthy and positive downtown experience. Please consider this as my notice of disapproval for this proposed new business in our Historic Downtown Main Street shopping district. Thank you for your consideration.

It was also noted that a telephone call was received from Mr. John Nemeth of Nemeth's Lounge who indicated that he had no issues with the conditional use request.

Ms. Shoop asked the applicant how he would respond to the concerns in the letter that was just read. Mr. Nofeiger replied that he can understand the concerns and he respects her opinion. He stated that he knows this person is very reputable and has known her for a long time. He stated that is where the responsibility relies on him to show her that he is not going to allow this to happen. He stated that his intention is not to harm the City.

Mr. Komjati asked Mr. Nofeiger if he has owned a business before. Mr. Nofeiger replied no. He indicated he has worked for Avery Dennison for six-years and has taken money from his 401K to start up this business. Mr. Komjati commented that this is quite a leap of faith in the present economy. Mr. Nofeiger stated that he is willing to take a chance in order to succeed.

Chairman Fitzgerald indicated that at this time he would like to open the meeting to the public. He asked that anyone wishing to speak on this item to state their name and address for the record. Chairman Fitzgerald asked for those in favor of the request to speak at this time.

Ms. Angela Hytree, 47 Hayes Street, Painesville, stated that she is Mr. Nofeiger's sister. She stated that she also grew up in Painesville. They do not want crime in the area. People are going into businesses no matter what the business type is. There is no way to keep someone from coming into your store. She commented that they would only sell to reputable businesses.

Chairman Fitzgerald asked if there was anyone present to speak against this request. Ms. Mary Jo Miller indicated that she has a business downtown at 150 Main Street, Painesville. She stated that this business might be a good fit in Painesville itself, but not in the Historic Downtown Area. This type of business does not fall in the plan for the downtown to get retail establishments. She stated that she objects to the proposed business in Historic Downtown Painesville.

Mr. Doug Nagy, Executive Director of the Downtown Painesville Organization, 1 Victoria Place, Suite 265, indicated that he had been contacted by several business owners with concerns about this proposed business. He stated in particular the sale of needles in the downtown area. He feels this business is not compatible with the other businesses in the area. Mr. Nagy commented the Commission should consider that this is not the only location in Painesville or in Lake County to open this business. In the downtown area, the merchants provide a lot of cross traffic to each other. The recruitment effort for this area is to find retailers that are more compatible with the current business. He stated he believes the clientele that would frequent the tattoo supply shop are not the same type of clientele that would use the current businesses in the downtown. Mr. Nagy indicated he is also concerned with the business model and concept of this business. Some businesses do not have a business plan in place and this can be very risky. He stated the City of Painesville has a Small Business Association (SBA) program available to prospective business owners. He suggested that Mr. Nofeiger contact the SBA and take advantage of their free advice. He urged the Commission to deny this request.

Chairman Fitzgerald asked if there were any other comments. There being no comments, he asked if the City had any additional comments on this request. There were no comments. Mr. Komjati stated it seems that the biggest concern is the location of the proposed business. He asked that the applicant contact the Economic Development Department to find a more suitable location for this business.

Mr. Nofeiger asked to address the comments made by the audience. He responded to the comments on the sale of needles. The needles that are sold to tattoo parlors are widely mistaken. These needles have one purpose and that is to pick up ink and deposit it. The needles are not hypodermic needles and cannot be used for drug use. He stated that he feels that this profession is part of an art culture; he is providing the materials for art to be created.

Chairman Fitzgerald stated the main issue regarding this request is that the proposed use is not consistent with the permitted and conditional uses in that area. Mr. Nofeiger asked what guidelines his proposed business does not meet. Ms. McMahon replied that there are standards in the code for evaluating a conditional use permit. They are, (1) will be in harmony with the existing or intended character of the neighborhood and that such use will not change the essential character of the area; (2) will not adversely affect the use of the adjacent property; (3) will not adversely affect the health, safety, or welfare of persons residing or working in the neighborhood; (4) will be served adequately by public facilities and services such as but not limited to highways, roads, police and fire protection, drainage facilities, water, sewer or schools; (5) will be in accordance with the general or specific objectives, and the purpose and intent of the Zoning Ordinance and the Comprehensive Plan of the City. Ms. McMahon stated that specifically the Downtown Master Plan identifies the kinds of uses that have been brought up tonight as being the focus of the uses. This is an adoptive plan as part of the Comprehensive Plan for the City of Painesville. Based on those issues that are in our ordinance, the City needs to evaluate conditional uses for those that areas where there is concern. Ms. McMahon stated lastly as indicated in the City Planner's memorandum, the zoning code is a permissive code. It outlines and identifies the various uses that are permitted in various categories. The Commission has gone through and identified types of uses in various areas. While retail of a certain kind is permitted in the downtown district, it is not the broadest general retail that is in the B-2, General Business District. Given that, and the fact that a sale is being made to a non-retail customer even though the sale may be at a retail price, it is a business-to-business sale; by definition, that is a wholesale type operation. Ms. McMahon indicated that being a retail business is not the entire reason for locating in this location, the fact there are other areas that this use could be permitted is also part of the decision. The Commission has already made that decision in establishing the zoning code.

Mr. Lyons commented that the issue before the Commission is a narrow issue that is whether or not this is a similar use to the other approved uses. There are five factors the Commission uses to evaluate the application and if the use does not meet those criteria the Commission needs to determine if a permit can be issued.

Chairman Fitzgerald asked if there was any further discussion. There being none, a motion was made by Mr. Komjati, seconded by Ms. Shoop to approve the Conditional Use Permit Application at 218 East Main Street for a Tattoo & Piercing Supply Shop. On roll call Ms. Shoop, Mr. Komjati, and Chairman Fitzgerald answered "no". Motion failed.

Mr. Komjati urged the applicant to speak with Ms. Bieterman, Economic Development Coordinator, regarding an appropriate location for this business. Ms. McMahon offered to give Mr. Nofeiger information on how to contact Ms. Bieterman.

ADMINISTRATIVE REPORT:

Chairman Fitzgerald read the first item under the Administrative Report.

Refusal No. 2153 issued July 2008 to Coaches Corner, Inc.; extension granted 11/2009: update to be provided on the operation of the home after one-year.

Mr. James Dillard, Director of Coaches Corner and President of the Painesville City Board of Education, 947 North Avenue, stated that the update on Coaches Corner is they are disappointed they are not open yet. They have run into issues with the certification process with the State of Ohio. They believe they have met all of the requirements, the rules and policies to be put in place. They have hired the director to oversee the project going forward. They also have the preliminary interviews for the house parents to reside in the home. The house is physically and structurally prepared and approved. The house recently passed an updated fire inspection. They are in the

process of furnishing the home with the help of Avery Dennison. The next step is to wait for the feedback from the State of Ohio. Mr. Dillard indicated that he could not be specific to the timeline of when this will be finalized by the State. He stated that he hopes that they will get the approval and the house will be furnished; the personnel in place, open for operation and then going through the process of finding boys that need a home.

Chairman Fitzgerald asked if there were any comments from the Commission. There being none, he asked if the City had any additional comments. There were no further comments, Chairman Fitzgerald asked for a motion on this item. Motion by Ms. Shoop, seconded by Mr. Komjati to approve an extension for the Conditional Use Permit granted to Coaches Corner with the original stipulations stated in the original permit. On roll call Mr. Komjati, Ms. Shoop, and Chairman Fitzgerald answered "yes". Motion carried.

Chairman Fitzgerald moved onto the next item under the Administrative Report.

Temporary Structure and Uses: Lake Erie College was granted the placement of a temporary modular unit at Recreation Park on June 12, 2008 with an extension granted in December 2008 and in November 2009 with the stipulation the modular unit be removed by December 1, 2010. Lake Erie College is requesting a one-year extension of their permit for the modular unit.

Ms. Lisa Liotta, Lake Erie College, 391 West Washington Street, explained that the extension for the temporary modular unit is necessary for the use of the Storm football team until the field house expansion project is completed. The field house project has been delayed due to a turf field project scheduled for Jack Britt Stadium. The college is requesting that the extension be granted for one-year.

Chairman Fitzgerald asked if there were any questions. Ms. Shoop commented on the Staff Report. It recommends that the structure be maintained in good repair. She asked if the structure has been inspected and if it is in good repair now. Staff assured the Commission the structure is in good repair.

There being no further comments or questions, Chairman Fitzgerald asked for a motion. Motion by Mr. Komjati, seconded by Ms. Shoop to extend the temporary structure permit for Lake Erie College at Recreation Park for one-year with all of the stipulations on the original permit. On roll call Ms. Shoop, Mr. Komjati, and Chairman Fitzgerald answered "yes". Motion carried.

Chairman Fitzgerald moved onto the next item under the Administrative Report.

Review of Conditional Use Permit (Refusal No. 2111) issued to Lakeview Bluffs LLC and Tierra Solutions, Inc. for soil removal at Elm Street (Parcel Numbers 15-A-019-0-00-013-0; 35-A-002-0-00-002-0; and 35-A-002-0-00-003-0): Granted February 21, 2007; reviewed December 13, 2007; Extension Granted December 2008; Extension Granted November 2009 with stipulation to be reviewed in 2010.

Mr. Todd Davis, President of Hemisphere Corporation, introduced himself to the Commission. He indicated that he would like to give a quick overview of the project. This is a very large-scale long-term project. Mr. Davis stated the permit was for them to use clean soil from a portion of the site to re-grade and cap other sections of the site. A road and bridge were built onsite to allow the transportation of the soil from one side of the site to the other. The 120-acres along the shoreline have been completed. This process took over 7-years to complete. He indicated they have just received approval from the EPA to cap the area that will be used for the golf course. There have been very little to no complaints from the residents of this area. The complaints that were received were dealt with quickly and there have not been any issues. He stated that by constructing the bridge, the heavy construction traffic was kept off the city streets, which alleviated many of those types of issues. Mr. Davis indicated they are very pleased that the work has gone so smoothly.

Mr. Davis explained the current scenario of the work to be done on the site. Construction has slowed down due to the economic downturn in the economy. He indicated that they have been taking care of all the necessary paperwork and processes needed from the Ohio EPA. Those include the remediation work necessary for the site along with the monthly meetings required which have been done for the last ten-years. They have worked cooperatively and collaboratively with both the USEPA and the Ohio EPA. The final certification for the last 180-acres should be granted by the end of the year. Mr. Davis stated they are still working with IMG and Tierra Solutions and there are no plans to change the overall development. They still have several more years of work ahead of them and once the economy starts to change then the project should move more quickly. Mr. Davis

indicated that he could answer any questions from the Commission regarding this site. He stated that as far as extending the Conditional Use Permit, they would have at least a couple more years before they are done with the soil removal and they are hopeful the Commission would grant the extension.

Ms. Shoop asked how much soil is left on the area they are removing it from. Mr. Davis responded they have more than they will ever need for the site. The site was designed so the soil would be moved with a specific purpose. The excavation of the current area is to create a pond. The MetroParks have been working with them to create a fishing area on the site.

Chairman Fitzgerald asked about the vineyard that was discussed at previous meetings. Mr. Davis indicated the vineyard is producing grapes and they are bottling wine from it. Chairman Fitzgerald asked about the interior road on the site. Mr. Davis explained the origin of the road and that the MetroParks are looking into creating a bike trail system in the project. In addition, they would like to have public access to the Grand River.

Mr. Komjati asked about the economy's role for the business to maybe re-look at their business plan and change it to allow for the project to be done quicker. Mr. Davis responded they are always looking at ways to "tweak" their model to try to get this project done faster. They have gone back and looked at the model and cannot see a better use for this property. They have been in discussions with end-users who would like to locate to this area. Until the infrastructure is put in place, they are not able to commit to those prospective users. Originally, the project's first phase was to be completed this year. Realistically this cannot happen due to the economy and the fact that the future of that is unknown.

Chairman Fitzgerald asked when the first phase is projected to begin. Mr. Davis indicated they are hoping to start in 2012. If the market changes it would be sooner, if not, that is when they are hoping to start. Mr. Davis inquired about stipulation number 11 in the conditional use permit. The stipulation mentions removing the bridge. They would like to have the bridge remain as a permanent fixture on the site. He asked what requirements are necessary from the City to make the bridge permanent instead of temporary. Mr. Davis indicated this is an important feature of the site and adds value. At the time of the design, CT Consultants worked with the County and City Engineers to be sure the bridge met the design standards. He stated that they would like to request the second sentence from stipulation number 11 be removed. There was discussion about the bridge and the possibility of expanding it to a two-lane structure and the fact that the bridge will remain a private bridge.

Mr. Lyons stated that this is the first time the City has heard this request. He suggested the applicant submit documentation regarding this request to the City Engineer and it can be dealt with at a later time and keep that option open. Mr. Davis agreed that he would submit the documentation to the City on this request.

Chairman Fitzgerald asked if there were any further questions or comments. There being none, he asked for a motion. Motion by Ms. Shoop, seconded by Mr. Komjati to approve the twelve (12) month extension request for the Conditional Use Permit for Refusal #2111 with the stipulations that were agreed upon for the original permit with an expiration date of December 30, 2011. On roll call, Mr. Komjati, Ms. Shoop, and Chairman Fitzgerald answered "yes". Motion carried.

Chairman Fitzgerald moved onto the next item on the Agenda under the Administrative Report.

Final Plat Approval – Heisley Park Phase 14 – consisting of 23 residential lots.

There was no one present to speak on this item. The Staff Report indicates all the necessary items have been reviewed and recommends approval. Chairman Fitzgerald asked if there were any questions. There being none, he asked for a motion. Motion by Mr. Komjati, seconded by Ms. Shoop to approve the Final Plat for Heisley Park Phase 14 consisting of 23 residential lots. On roll call, Ms. Shoop, Mr. Komjati, and Chairman Fitzgerald answered "yes". Motion carried.

Chairman Fitzgerald moved onto the next item on the Agenda under the Administrative Report.

Minor Subdivision Determination – Walnut Ridge Condominium Project.

Mr. Lyons indicated that the next two items on the Agenda are both dealing with Walnut Ridge Condominiums. It would be appropriate to ask the applicant which item he would like to have the Commission hear first. Mr. Winfield responded that he would like to go in the order written on the Agenda.

Mr. Lyons stated that in order to clarify for the record, Mr. Winfield notified the City that he would have a court reporter present. Mr. Winfield has hired the court reporter and he is obligated to pay for the court reporter. What is transcribed by the court reporter is not the official record of the City. If the City were to decide to purchase a copy of this transcription, then that would have to be decided by the Commission to accept that as the official record of the City.

Chairman Fitzgerald asked the applicant to state his name and address for the record. Mr. Thomas Winfield, 7745 Brakeman Road, Leroy, Ohio, indicated that he is asking the Commission for a minor subdivision on this property. He stated the process has been years to develop this property. He has submitted letters asking if this was a minor subdivision, but since this had been going on for so long, it seemed as though completing the process was the order of business. Mr. Winfield stated upon being rejected on his final plat approval he found himself in the position of having to make a determination. He believes the best decision is to return the land to its actual legal request, a minor subdivision. He stated the property meets all the terms outlined in section 1111.10 of the code for minor subdivisions. Mr. Winfield indicated it meets all four conditions of a minor subdivision. The property requires no lot-split. He stated that in reading the Staff Memorandum for this item, it gives two objections to this request. One is a misunderstanding since the documents were turned in, as the legal description of the property and the other is it was not a minor subdivision because there is no division of land. He stated that is bothersome. There is a division of land when you do a minor subdivision. Land is dedicated for common use by owners for that reason there is a delineation of property. Mr. Winfield read the definition of subdivision from the code; "The improvement of one or more parcels of land for residential, commercial or industrial structures or groups of structures involving the division or allocation of land for the opening, widening or extension of any street or streets except private streets serving industrial structures; the division or allocation of land as open spaces for common use by owners, occupants, or lease holders, or as easement for the extension and maintenance of public sewer, water, storm drainage or other public facilities. See "minor subdivision". Therefore, after the exception the requirement is met, this will always be one lot.

Mr. Winfield stated his next request on the Agenda for the Final Plat would be made mute if this is accepted. He commented that the rules never work. There could never be a way that the terminology would allow a condominium. The memorandum says this is not a lot split therefore; it does not belong in subdivision regulations. This development has been in the wrong category for the last five years. He stated for that reason this is an easy thing, reduce this as a minor subdivision and allow this to exist. Mr. Winfield commented that when the developer receives a preliminary plat he is supposed to get a signed copy of the preliminary plat. That has a lot of merit. He indicated that he has not received his and he believes this has been deliberately kept from him. In a recent meeting, he was told that was not the procedure. Mr. Winfield stated that 1109.11 should be changed to reflect what actually happens. He claims that someone has deliberately violated the city zoning code and ordinances. This has kept him from doing anything on this site.

Mr. Winfield reiterated that he would like to move forward with his legal condominium development. He recognizes that he needs to get all the building permits and the necessary paperwork into the various departments to begin building. He would like the Commission to approve this as a minor subdivision so he can continue his plan once the economy changes. Mr. Winfield talked at length of the history he has had with the submissions of his preliminary plat. He also talked about the lawsuit he had filed; the various discussions with the MetroParks; the metes and bounds survey that he has by Clyde C. Hadden. Mr. Winfield stated that he has objection to the issues he has been having with the MetroParks.

Chairman Fitzgerald asked if the City had any comments regarding the code issues Mr. Winfield discussed. Mr. Lyons stated that he and Mr. Schaedlich have been meeting with Mr. Winfield. Mr. Winfield made a comment that the City deliberately did not sign his preliminary plat and that has kept him from doing anything on his property since 2007. The City did not do anything deliberately. The preliminary plat was approved, it was approved in the minutes, Mr. Winfield had a preliminary plat, Mr. Winfield came back before this body on two occasions and received an extension on the plat, he came back for a third extension this past summer and was at that time not approved. Mr. Lyons stated that in terms of the City doing something deliberately, the City has not done anything deliberately. Whether or not there is a signature on the preliminary plat, it is unknown since Mr. Lyons has not seen the preliminary plat. The fact is Mr. Winfield has had a preliminary plat and if he met the code with the City then he could have built. This minor subdivision issue came up at a meeting with Mr. Schaedlich and Mr. Lyons at the request of Mr. Winfield. Mr. Winfield had proposed this option at that meeting. Mr. Lyons stated that he had never heard of a minor subdivision not dividing any land. What Mr. Winfield is proposing is to have no division of land; instead, he wants to have the Commission approve a document that is a survey of his property that

he has listed as a plat. A subdivision is defined in our code. It states it is a division of land shown as a unit or as a contiguous unit into two or more parcels. A normal subdivision is more than five parcels of land. Mr. Lyons used the Heisley Park Subdivision Plat that was just approved as the example for the Commission. He explained the process and that it is an expensive situation, engineers and surveyors are hired to prepare a plat. Both the Ohio Revised Code and the City provide for a minor subdivision where a division of a parcel of land that does not require a plat to be approved by planning authority according to Ohio Revised Code 711.131 also known as a lot split. It is further defined in 1111.10, which states no more than five lots can come out of the split. Mr. Lyons stated that if Mr. Winfield had submitted a parcel of land to be split into two units or up to five units, he could have submitted that for approval to the Commission and if it had met the four criteria in section 1111.10 of the ordinances then the Commission would have the authority to do that. That is not what has been done; Mr. Winfield has divided nothing. Mr. Lyons indicated that he believes what Mr. Winfield is trying to do is to have the Commission call this project a minor subdivision so he meets the requirements of having a final plat approved within one-year of the submittal of the preliminary plat. Mr. Winfield is past that one-year, but that is okay since he has received a number of extensions. Now he is at the time-period where he either has to have a final plat or the preliminary plat approval time will expire and he will have to start over. Mr. Lyons stated that he believes that Mr. Winfield is making an attempt to not do that. He finds value in having an approved preliminary plat in order to try to build this project. Unfortunately, for Mr. Winfield, this is not what our ordinances provide for in terms of a minor subdivision.

Mr. Winfield asked if he could comment directly to Mr. Lyons comments. Chairman Fitzgerald indicated that Mr. Winfield already had his opportunity to speak on behalf of this request. Mr. Winfield indicated that for the record he objects to Mr. Lyons comments; he is applying for a minor subdivision according to the City's regulations. Mr. Winfield argued the fact that he has one parcel of land, which is to be delineated for common use for the use of condominiums.

Chairman Fitzgerald asked if members of the Commission had any comments or questions. There being none, he asked if there was a motion. Motion by Mr. Komjati, seconded by Ms. Shoop to accept Walnut Ridge Condominium Project as a Minor Subdivision. On roll call Mr. Komjati, Ms. Shoop, and Chairman Fitzgerald answered "no". Motion **failed**.

Chairman Fitzgerald moved onto the next item on the Agenda.

Final Plat Approval – *Walnut Ridge Condominium Project* – consisting of 24-units and 2.09 acres of land.

Chairman Fitzgerald asked if Mr. Winfield would like to make any comments on this item. Mr. Winfield indicated that due to the time and Mr. Schaedlich's memo, which states that information could not be submitted in time for any rational discussion on this matter, he sincerely requests that this item be tabled with the concession there be no penalty. Mr. Winfield explained that he would like ample time to explain his situation.

Mr. Winfield cited sections from the code that related to the requirements of the plat submittal. He also discussed his situation where he has submitted his plans for review and they are returned with comments from the engineer indicating changes are necessary. Mr. Winfield stated the City's code is not written so people can understand and follow it. He also indicated there has been so much animosity over this project and he wants to move forward and build it.

Mr. Winfield talked about his issues with MetroParks and he believes that there is some reason that the City does not want this property developed. He believes there is some kind of cover up between the Schools and the MetroParks.

Chairman Fitzgerald interjected that Mr. Winfield is making many accusations. Mr. Lyons commented that Mr. Winfield was asking for this issue to be tabled. He asked Mr. Winfield if he wanted the Commission to vote on this item or would he prefer to continue speaking on the issue. Mr. Winfield replied that he believed that he had to show the interest or involvement and show the documents he intends to address. He stated that he has taken care of most of the items.

Mr. Winfield stated that he is requesting this item be tabled without consequence. Chairman Fitzgerald asked Mr. Lyons to give his opinion on this request. Mr. Lyons stated that this situation is different from the previous, since those were zoning items where the extension is provided for within the ordinance. On the other hand, the code specifically states the Commission shall act within 90-days and if the Commission does not act within the 90-days then what has been submitted is approved as a final plat. Mr. Lyons commented that he does not believe the Commission can table

or delay this; the Commission has to act. He explained secondly, Mr. Winfield does not have the authority to request this item to be tabled since the property is in the name of his wife. The submission that was given to Mr. Schaedlich indicated that he is doing this on behalf of his wife. He does not have the legal authority to bind his wife or to waive anything; even if she was here and asked for this to be waived it still cannot be done, the Commission has to act within 90-days.

Mr. Winfield stated that he has a document that his wife has given him the authority to speak on her behalf. Mr. Winfield presented the document to Chairman Fitzgerald for the record. Mr. Lyons stated that normally a power of attorney is necessary when dealing with land issues.

Ms. Shoop stated that she has a couple questions. She asked about the plat that was submitted and the fact that it does not show the same type of detail that was on the plat just reviewed for Heisley Park. Chairman Fitzgerald commented that is his understanding as to why it is incomplete. Mr. Schaedlich explained that it is incomplete; the plat is lacking sanitary sewer profile, road profile; he explained an approved final plat and improvement plans from another project were provided to Mr. Winfield's engineer to get those items in place, there is nothing on the plat that was submitted that gives any indication that has been done. Mr. Winfield argued that the final plat is to be the same as the preliminary plat as stated in the codebook. Chairman Fitzgerald commented that Mr. Winfield has probably had this discussion with the City on this issue; this is not the venue to argue what is acceptable and not acceptable. Chairman Fitzgerald restated that their understanding of what has been submitted is incomplete.

Mr. Winfield requested that someone read Section 1111.08 of the Codified Ordinances. Mr. Lyons read Section 1111.08 Approval of Final Plat. "The Planning Commission shall approve or disapprove the final plat within ninety days after it has been filed. Failure of the Commission to act upon the final plat within such time shall be deemed as Planning Commission approval of the plat. If the plat is disapproved, the grounds for disapproval shall be stated in the records of the Commission, and a copy of the record shall be forwarded to the subdivider. The Commission shall not disapprove the final plat if the developer has done everything that he was required to do and has proceeded in accordance with the conditions and standards specified in the approved preliminary plat. If disapproved the subdivider shall make the necessary corrections and resubmit the final plat within thirty days to the Commission for its approval. If a plat is refused by the Commission, the person submitting the plat which the Commission refused to approve may file a petition within ten days after such refusal in the Court of Common Pleas of the County in which the land described in the plat is situated to reconsider the action of the Commission."

Mr. Winfield stated the question is whether or not he has done everything that was supposed to be done for the preliminary plat. He posed his question again to Mr. Schaedlich. Chairman Fitzgerald asked Mr. Winfield to address the Commission and not the Administration. Mr. Winfield stated that he is asking Mr. Schaedlich the question, has everything been done that was supposed to for the preliminary plat. He commented that this was the Brian Frantz Memorandum. Chairman Fitzgerald asked how long ago Mr. Frantz left the City. Ms. McMahon indicated that it has been four-years. Mr. Schaedlich stated that prior to the granting of a final plat, per 1115.06 either: all improvements required by this Title One - Subdivision Regulations shall have been constructed, or, to the extent contemplated in Sections 1107.03, 1111.03 and 1113.18, financial guarantees for their construction shall have been posted; or in the case of a plat including only lands inside the City, the subdivider shall have petitioned Council for the construction of such improvements and the levying of special assessments to pay costs thereof and Council shall have accepted that petition. He stated there is nothing in the ground and there are no formal improvement plans. Mr. Schaedlich indicated that an incomplete plat is what was submitted. Mr. Winfield stated that he is not asking the Commission to approve that, he is asking for the final plat to be approved which is a piece of paper. The codebook clearly states it has to be a copy of the preliminary plat. It does ask for improvement plans and they can come after, the question is the final plat approval is what we are asking for, only the final plat approval. That is what the request is here today. He stated if it is denied for anything but the final plat, another ordinance would be violated. Mr. Winfield stated he is asking for the final plat to be approved per the ordinance.

Ms. Shoop asked for clarification of the memos from the City Planner and City Engineer. It was determined that the memorandums she was viewing were the correct memos. The items that are listed on the memorandums are required for the approval of the plat. Ms. Shoop asked if the items listed are the same for both the preliminary and final plats. Mr. Schaedlich responded that he was not with the City at the time the preliminary was submitted and reviewed. The preliminary plat was approved with stipulations that were outlined in a memorandum to the Mr. Winfield.

Mr. Lyons indicated the memorandums that Ms. Shoop is referring to are a part of the record. These

memorandums are submitted by the City Planner and the City Engineer. In addition, the City Planner issued Mr. Winfield a letter dated October 20, 2010 that he would also like to make part of the City record. The letter indicates deficiencies in what Mr. Winfield had done. Mr. Lyons added that since this is a condominium plat that Mr. Winfield is involved in, the ORC section 5311.07 stipulates that “as-built” drawings for the buildings constructed must be submitted. None of that was done. Also since it is a condominium development, in order to file a subdivision plat with the county recorder’s office to create a condominium development you have to have the declaration of ownership per the ORC Chapter 5311. To my knowledge that has never been submitted by Mr. Winfield in this situation. Once again, a plat that is filed creates the ability to sell lots. In terms of the Heisley Park subdivision, that developer had constructed and bonded the road which gives them the right to sell individual lots that meet the city’s zoning requirements. If the Commission does decide to turn this request down, per the code section 1111.08, the reasons for turning it down have to be stated to be part of the record. The reason could be the memorandums submitted by the City Engineer, City Planner, and also the reasons stated in the October 20, 2010 letter to Mr. Winfield.

There was discussion regarding the voting process. The Commission was advised to vote on the submission of the Final Plat separately and then vote on the reasons for the outcome of the vote. The specific grounds must be stated if the Commission decides to turn down the request.

Mr. Winfield responded to comments made by Mr. Lyons. The section that involves streets and roads citation .07 there are no named streets in our project. He stated in regards to the Declaration and Bylaws he had taken care of this issue earlier today with Mr. Schaedlich. He asked him to verify this fact. Mr. Schaedlich stated that he contacted Mr. Winfield’s attorney, Geoff Weaver, and he indicated that he could provide them. Mr. Winfield stated then that means those two items have been addressed. Mr. Lyons stated that Mr. Winfield has consistently stated Geoff Weaver can provide them however, they have not been provided as of being here today.

There being no further discussion, Chairman Fitzgerald asked for a motion to approve the final plat. Ms. Shoop made a motion to approve the final plat for Walnut Ridge Condominiums consisting of 24-units and 2.09 acres of land. Mr. Lyons interjected that if the Commission is planning on approving the plat that is a good motion. If the Commission is planning on disapproving it, then the motion should be stated to disapprove. There was discussion among the Members as to the correct verbiage for the motion.

There being no other discussion, a motion was made by Ms. Shoop and seconded by Mr. Komjati to **deny** the Final Plat submission for Walnut Ridge Condominium Project consisting of 24-units and 2.09 acres of land. On roll call Mr. Komjati, Ms. Shoop, and Chairman Fitzgerald answered “yes”. Motion carried.

Chairman Fitzgerald asked for a motion to state the reasons for the disapproval for the Final Plat. Motion by Ms. Shoop, seconded by Mr. Komjati to incorporate the grounds for disapproval are based on the submitted letter by Mr. Russ Schaedlich dated 10-20-10, and memorandums dated 10-21-10 and 11-2-10; and the memorandum by Mr. Richard Lesiecki, City Engineer, dated 9-15-10. Mr. Winfield asked to comment. Chairman Fitzgerald responded no. Mr. Winfield indicated that he objects to that. There being no further discussion, Chairman Fitzgerald asked the secretary to call the roll. On roll call Mr. Komjati, Ms. Shoop, and Chairman Fitzgerald answered “yes”. Motion carried.

OTHER MATTERS THAT MAY PROPERLY COME BEFORE THE PLANNING COMMISSION

Chairman Fitzgerald asked if there were any other matters to come before the Commission. Ms. McMahan stated the Commission should have the list of meeting dates for 2011 in their packet. She commented that the Commission should have received correspondence from Mr. Ray Sternot. The City will be looking at Mr. Sternot’s comments from an Administrative standpoint and bringing information back to the Commission for review.

ADJOURNMENT

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