

PLANNING COMMISSION MEETING

February 21, 2013

The Planning Commission convened in Courtroom No. 1 at Painesville City Hall for their regularly scheduled meeting. Chairman Fitzgerald called the meeting to order at 7:30 PM. He asked the secretary to call the roll. Members in attendance were, Mr. Mark Wainwright, Ms. Carol Fleck, Mr. David Komjati, Ms. Christine Shoop, and Chairman Thomas Fitzgerald. Also present were, Interim City Manager/Community Development Director Douglas Lewis, Assistant Law Director James Lyons, and Secretary Lynn White.

MINUTES:

Chairman Fitzgerald asked for additions or corrections for the Planning Commission Meeting of November 8, 2012. There being no comments, Chairman Fitzgerald asked for a motion. Motion by Ms. Fleck, seconded by Ms. Shoop to approve the minutes for the Planning Commission Meeting of November 8, 2012 as written. On roll call, Ms. Fleck, Mr. Komjati, Ms. Shoop, Mr. Wainwright, and Chairman Fitzgerald answered "aye". Motion carried.

NEW BUSINESS:

There was no New Business to come before the Commission.

ADMINISTRATIVE REPORT:

Chairman Fitzgerald read the first item under the Administrative Report.

- **1113.23 Buffers/Mounding** for developments adjacent to railroad tracks and non-residential roads and access to and from new developments.

Chairman Fitzgerald asked for the Administration to comment on this item. Mr. Lewis explained that the Ordinance was developed in 2011 as a means to ensure that buffering of new developments in the City from the effects of railroads and limited access highways is accomplished either by protecting existing natural features or by providing landscape buffering through any one of a combination of buffering techniques. Such techniques include walls and/or fencing, earthen mounds, plant materials, or any combination of the aforementioned items thereof, as long as the initial installation does not exceed twelve feet in height. The comments received were that the ordinance is not being enforced as it was intended.

Mr. Lewis indicated that City Council has received input from residents that the current Ordinance is not being properly applied, particularly in terms of Heisley Park Subdivision, Phase XIII, and needs additional language to provide proper utilization and enforcement. City Council is requesting that the language of Code Section 1113.23 be reviewed by the Planning Commission to determine if any changes are needed. The most recent phase was put in next to the railroad tracks. There is a natural existing buffer, flood plain/wetlands area, and trees. The city engineer and planner determined the existing buffer was sufficient and met the requirements defined in Section 1113.23. The section states *The provisions of this section are intended to protect and enhance the visual appearance of the City by encouraging the preservation of existing trees and natural features;* Mr. Lewis explained that the residents have commented that the code is not being applied and the existing trees and natural features are not sufficient for this area. Mr. Lewis stated that based on this information, City Council has asked that this issue be brought up at the Planning Commission to decide if the code needs updating. He directed the Commission to look over Mr. Schaedlich's memorandum.

Chairman Fitzgerald asked about the natural buffer referenced that is behind the houses at Heisley Park. He wondered what the distance is from the railroad tracks to the property line. Mr. Lewis responded the distance is approximately 300-feet. The ordinance does not indicate a specific distance for the installation of a buffer.

Ms. Shoop asked if the existing trees would be removed. Mr. Lewis responded no, the trees are located in a wetlands area and cannot be removed. Chairman Fitzgerald asked about the trees and the type of trees that are located in this area. Mr. Lewis explained the trees are deciduous and are approximately 8-10 inches in diameter and about 35-feet in height. Chairman Fitzgerald commented that during the winter they would not provide much of a buffer.

Ms. Shoop stated the recommendation is for no changes be made and the comments from Mr. Sternot indicate the flat land is unacceptable. Mr. Lewis responded that the flat land referenced is

suitable since mounding is not required. There are other options available to the developer in regards to providing a sufficient buffer.

Mr. Ray Sternot, 346 Birchwood Lane, responded that he is more than 300-feet away from the railroad tracks and he can still hear the train. He stated that the intent of the buffer was for it to be put in place to lessen the effects of the train on the nearby residents. The 300-foot flat land between the rear of the subdivision to the edge of the train property is not a sufficient buffer for that purpose. Mr. Sternot stated in his opinion the code was interpreted incorrectly by Mr. Schaedlich in terms of the intent of the legislation. He stated he believed the code was written correctly. Mr. Lewis indicated that the 300-foot is not in the code, Mr. Schaedlich used the 300-foot as a reference for City Council so they had an understanding of the width of the area. Mr. Lewis and Mr. Sternot discussed what was presented at the City Council meeting leading up to this matter coming before the Commission.

Chairman Fitzgerald inquired about the buffer location in terms of property ownership. The buffer is to be provided in a common area belonging to the Homeowner's Association as part of the overall subdivision. The area currently being considered for the buffer is protected by the fact it has been determined a wetlands area. The wetland abuts the railroad right-of-way and the edge of the subdivision property. There was continued discussion about placing a buffer in the wetlands area and the fact this could not be accomplished due to stringent regulations.

Mr. Sternot commented that they are not suggesting placing a buffer in a wetlands area. He would like to see better planning principles applied when developers submit their initial plans to the City. The buffer could have been provided for the homeowners outside of the wetlands area in a common area belonging to the subdivision. In 2011, the definition was placed into the code. Mr. Komjati asked Mr. Sternot what exactly he wanted from the Commission in regards to what changes are to be made to the code. Mr. Sternot stated that he wants the ordinance to be enforced. The buffer was not put on the property on the most recent phase of Heisley Park.

Mr. Lyons asked Mr. Sternot if he was asking for any change to the ordinance as it is written. Mr. Sternot replied no. Mr. Lyons stated the ordinance as written is sufficient. Mr. Sternot commented that he believes the ordinance should stipulate that a buffer meet the requirements as intended by the meeting minutes from the 2011 Commission hearing. He stated that it should also exclude any flat distance measurement. It should only reference a height requirement for such buffer. Mr. Komjati commented that Mr. Sternot statement would mean that a distance of 1,000 and up to 30,000 feet would not be a sufficient buffer.

Mr. Cimaglio, 477 Owego Street, replied that a buffer means the walls along the freeway or a row of trees. He used an example of being in the woods 100 to 300-feet away from someone and them not being able to hear you as well as being in an open area. Mr. Sternot stated that as you go down Elizabeth Drive there is a buffer with trees. The new area of Heisley Park by the railroad does not have a buffer in the same sense it is flat land.

Mr. Lewis asked to explain the interpretation from the Staff. The code states wall and/or fences shall be permitted. The code does not specifically state the use of mounding. The code indicates that mounding shall not be less than four-feet and no greater than eight-feet in height. Mr. Lewis stated that someone could come in a put in an eight-foot fence with no mounding; this would constitute a buffer in accordance with the ordinance. He explained that an earthen mound could also be put in under the same guidelines and it would constitute a buffer. They could also put in plant materials with or without mounding since mounding is not a specific requirement. There are no minimum or maximum density requirements. Also permitted would be any combination of walls, mounding, and plant materials. The maximum height is restricted at twelve-feet in height. Mr. Lewis explained the various combinations that could be done under this ordinance as it is written.

Mr. Sternot commented that he believes that was the intent of the ordinance. He stated that the meeting minutes of the November 10, 2010 Planning Commission Meeting it is written where Chairman Fitzgerald questioned the eight-foot height requirement and it not being sufficient. He stated the intent was to have the buffer at a certain height. Mr. Sternot commented that the intent is not being implemented.

Ms. Lori DiNallo, 835 Skinner Avenue, stated the reason Council had sent this back to the Commission was to make sure the ordinance was clear enough to enforce and not being left to judgment by the Administration. She stated that going back to the minutes is acceptable but that is not necessarily what is in the ordinance. Does the ordinance need to be adjusted to make it clear what the law should be so the interpretation is the same for the residents and the administration. Ms.

DiNallo stated that is what Council is looking for, is the ordinance clear enough.

Chairman Fitzgerald asked Mr. Lewis to comment on the buffer requirements; when it is necessary and when are you required to install a buffer. Mr. Lewis responded there are two situations where a buffer is required. One being railroad right-of-ways and the other is limited access highways. There is existing buffer language for industrial property abutting residential property. Mr. Lewis stated the existing language was used as a guide for creating the new language.

Chairman Fitzgerald commented that there is nothing behind these houses other than the wetlands and the railroad tracks. Does this mean there is no buffer other than the 300-feet of flatland? Mr. Lewis responded that there are trees. The Administration is implementing the first part of the code, which states preservation of existing trees and natural features. The developer has the option of leaving this natural area alone with the existing trees as their required buffer.

Ms. Fleck stated that typically wetland areas are very dense. They do not consist of a solid piece but of many parts, which can provide a greater buffering quality. She stated that 300-feet is approximately one city block or a football field. Chairman Fitzgerald asked about the height of the phragmites. They can be four-feet in height and they are invasive, they are found at the Mentor Marsh.

Mr. Sternot stated that the builder cut down a number of trees in 2010. This was done to beat a deadline where they were to be cut down now or never. This was done between Heisley Park and the railroad leaving a barren area. When this was done, it was noticeably louder in the subdivision due to this area being removed. Mr. Sternot stated this is insufficient. When the changes were made in 2011, he believed that the buffers were going to be a certain height and some sort of evergreen trees to improve the area, the noise, and the development. Mr. Komjati commented that maybe the developer thought the trees and the area would be a sufficient buffer but they did not take into consideration the other issues. Mr. Sternot asked if any of the Commission Members have seen the area and the trees that are in place. Several Members indicated that they have seen the area. Mr. Sternot commented that he is seeing the new development area being put in with the ordinance being put in place by Council there should have been a buffer up to eight-feet high. He feels the ordinance is not being enforced by the City. Mr. Sternot stated that he was asked if the ordinance should be changed. He commented that the ordinance is sufficient if it is being implemented to its intent.

Mr. Angelo Cimaglio, 477 Owego Street, commented that railroad tracks are six-feet above grade so the installation of a four-foot buffer would not alleviate the issues associated with noise. Mr. Sternot commented that we are trying to improve Painesville. When a councilperson says we are never going to be a Mentor or Painesville Township, we are not going to be. The city needs to implement the ordinances and look out for what is best for the community. The city should have told the developer back in 2011 that a buffer should be put in place.

Chairman Fitzgerald asked Mr. Lyons to comment on the buffer issue in regards to the legality of not putting in a buffer even though there is 300-feet of space. Mr. Lyons stated that there is nothing written about 300-feet. He went back to what Councilperson DiNallo said about whether or not the ordinance needs to be strengthened as to what is acceptable as a buffer. Mr. Lyons stated that the ordinance gives discretion to the Zoning Administrator and City Engineer to determine what is adequate buffering. It was determined that this row of trees was sufficient in order to meet the standard. This was a judgment call by the personnel. If the Commission wants to take away judgment calls then the standard needs to be increased. It is written this way to allow for variations in development. The City does not want to be so restrictive that it causes issues for development.

There was discussion about what can be done at this point. The developer has completed its development in that area and the land is now owned by individuals and the homeowners association. The City cannot make the developer put in buffers in the areas that are completed. The Homeowner's Association can put buffers in the areas that they have in their ownership.

There was also discussion regarding the way the process is supposed to work in regards to a submittal by a developer of the preliminary plat with the required buffer indicated on the plat. The Commission discussed their review process and what they should be looking for in a preliminary plat submittal. Mr. Lyons commented that the City brings already reviewed items to the Commission for their approval. The premise is the qualified individuals, City Engineer and City Planner, have reviewed the submitted items for compliance with the City's Codes.

Ms. Shoop asked Mr. Sternot what he wanted. Mr. Sternot asked to comment on the areas owned by the Association. He indicated those common areas are not given to the Association immediately. There is a point in time that once the phase is completed it is then turned over to the Association. Mr. Lyons indicated that he agreed, once they are built-out the ownership is no longer with the developer. Mr. Sternot stated that Heisley Park is over and done. It is past the phase where the City can make the developer put in the buffers. He stated that there is a lot of new development to be put in. The City has an opportunity to have something put in next to the high-speed tracks and put in a buffer.

Chairman Fitzgerald stated that the real question before the Commission is whether the ordinance is clear enough for the Commission to make that determination. Mr. Lyon replied the ordinance indicates the required buffer shall be submitted as part of the preliminary plat to be reviewed by the Zoning Administrator and the City Engineer for compliance will occur at the time of submittal of the preliminary and final plats.

Chairman Fitzgerald stated he understands what the audience is saying, he believes that the code is sufficient and no changes are necessary, the Commission needs to be diligent on these issues. Ms. Shoop asked if the Commission has the authority to make the developer put in a better buffer. Mr. Lyons indicated that if there is a justifiable reason the Commission has that authority. There was some continued discussion regarding the scope of the Planning Commission.

Mr. Sternot asked from this point going forward that the Commission expect at the minimum an eight-foot fence along the railroad tracks. He commented that the review is done the by experts and he has not seen any expert results from the reviews. He believes that the community has been failed by the lack of a buffer in this area. Mr. Lyons explained that once specific numbers are put into an ordinance it becomes hard to support since every circumstance is different.

Ms. DiNallo explained that if there was a specific number put into the code then there is always the option of asking for a variance. The code would be written so it would be very clear to both the applicant and the Administration. She stated that her fear is the intent can be different depending on who is interpreting the code. Mr. Lyons stated that is correct, variances can be asked for. He stated that just makes it happen differently since the Administration can work with the developers to get what is appropriate for the development without having a unilateral standard in place. There was discussion about having a noise guideline and if that would be appropriate.

Mr. Cimaglio commented about Asper Commons and how close the development is to the railroad tracks. Building nice homes is great; however, putting them that close will not improve the value of the homes in Painesville. Mr. Lyons stated those were built by the Federal Government. Ms. DiNallo commented that there are benefits to having lower income housing in a community. People need homes to live in and those are built for a reason. Mr. Cimaglio responded that there are many vacant dilapidated homes that could be torn down and good housing could be built.

Chairman Fitzgerald indicated the Commission needs to make a motion on the issue before them. He asked if there were any other comments from members of the Commission. The Commission discussed the motion that would need to be made and how the motion should be worded. Mr. Lyons suggested that if the Commission wants to change the language they should refer it back to the administration.

Mr. Jim Fodor, 67 Charlotte Street, stated that he agrees. There is definitely a loose type fit here. The city does not want to discourage development in the area and they want to protect its citizens. The installation of mounding takes land to build, fences require maintenance, we put this in the hands of the experts, we may not always agree with them but we rely on their expertise. Mr. Fodor stated that he agrees with Ms. DiNallo in the fact that Council wanted to see what recommendations the Commission might have to address this issue.

Chairman Fitzgerald asked if there was a motion. Mr. Komjati made a motion, seconded by Ms. Fleck, that no changes be made to the current code language for 1113.23 Buffers/Mounding. On roll call, Mr. Komjati, Mr. Wainwright, Ms. Fleck, and Chairman Fitzgerald answered "yes". Ms. Shoop answered "no". Motion carried.

Mr. Wainwright commented that the City needs to enforce what is in place currently.

Chairman Fitzgerald moved onto the next item on the Agenda.

- **1341.17 (b) and (c) Signage** proposed changes in code language relating to pole signs in the B-2 District.

Mr. Lewis stated the Commission has before them two proposed language changes. He explained the changes to the Commission. In the B-1 District, the first change is to the height of pole signs. The sign shall not exceed eight-feet in height, which is reduced from twenty-five feet above the established grade. This is the same as was done for the EMC signs. The other is the size of entrance and exit signs are to be limited to four square feet in area per face and eight square feet per sign rather than the five and six respectively. This is only for the neighborhood business district, or B-1, which is typically next to residential properties.

Chairman Fitzgerald asked if this affects existing signage. Mr. Lewis responded that only if the existing signage is being replaced would it have to comply with the new regulations. The other instance would be if the signage were to become dilapidated and forced to be removed. There was discussion regarding grandfathered signage and its continued existence. There was also discussion of the change from pole signs to ground signs. The B-2 District had this change put in place and this modification follows that language.

Chairman Fitzgerald asked for additional comments from the Commission. Ms. Shoop asked about the intent of the proposed code modifications and if they were clear enough. She stated that she did not want to end up with the same situation as the previous issue the Commission heard. It was determined the code language was fine.

There being no further discussion, Chairman Fitzgerald asked for a motion. Motion by Ms. Shoop, seconded by Mr. Komjati, to approve the proposed changes in the code language relating to pole signs in the B-2 District. On roll call, Ms. Shoop, Mr. Wainwright, Ms. Fleck, Mr. Komjati, and Chairman Fitzgerald answered "yes". Motion carried.

OTHER MATTERS THAT MAY PROPERLY COME BEFORE THE PLANNING COMMISSION:

There were no other matters to come before the Commission.

ADJOURNMENT:

There being no further business, Chairman Fitzgerald adjourned the meeting.

Lynn M. White, Secretary

Thomas Fitzgerald, Chairman