

PLANNING COMMISSION MEETING

April 12, 2012

The Planning Commission convened in Courtroom No. 1 at City Hall for their regularly scheduled meeting. Chairman Thomas Fitzgerald called the meeting to order at 7:30 PM. He asked the secretary to call the roll. Members in attendance were, Mr. Brian Temming, Mr. David Komjati, Ms. Christine Shoop, and Chairman Thomas Fitzgerald. Absent was Mr. Andrew Eade. 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 for additions or corrections for the Special Planning Commission Meeting of March 21, 2012. There being none, he asked for a motion. Motion by Ms. Shoop, seconded by Mr. Komjati, to approve the Special Planning Commission Meeting Minutes from March 21, 2012 as submitted. On roll call, Mr. Temming, Mr. Komjati, Ms. Shoop, and Chairman Fitzgerald said “yes”. Motion carried.

Chairman Fitzgerald asked the secretary to read the notice for Rezoning Application No. 77-12.

NEW BUSINESS: (Public Hearing Items)

Rezoning Application No. 77-12

Location: Permanent Parcel No. 15-C-023-0-00-009-0 (Stage Avenue)

From: R-1 Single Family District to M-2 Industrial District

An application has been submitted by W & W Construction, Inc. for the rezoning of Permanent Parcel Number 15-C-023-0-00-009-0. The rear portion of the property is currently zoned M-2 Heavy Manufacturing District while the front portion is zoned R-1 Single Family Residential District. The applicant would like to rezone the front portion of the parcel to M-2 Heavy Manufacturing District. The rezoning would bring the parcel into one zoning classification.

Chairman Fitzgerald asked if there was someone present to speak on this item. Mr. Benjamin Aveni, 41 East Erie Street, attorney, stated that he would be representing the applicant for this matter. He indicated that he would like to make a presentation and there are a few witnesses he would like to bring forth to the Commission. Mr. Aveni submitted an aerial photograph marked as Exhibit 1. The aerial shows the subject property and the 10± acre parcel zoned M-2 Industrial, which is bordered on the north by State Route 2 and by Richmond Street, Stage Avenue, and Extrudex Inc. The property owner also has another parcel containing 0.3 acres with split zoning of R-1 Single Family on the front half and M-2 Industrial on the back portion. The property was acquired together in 1995. At that time it was zoned M-2 Industrial. That zoning classification goes back to 1927, well before it was acquired. Mr. Aveni explained that at the time the property was acquired the parcels were all zoned with the same zoning classification. He stated that all the parcels on Stage had the heavy industrial zoning up to 1968. Mr. Aveni explained that the zoning was changed when the single-family lots were constructed with the homes fronting on Stage Avenue. There was a paper street in the rear portion of this area. Just recently, the Planning Commission had rezoned the rear portion of these lots with the single-family homes on them. Mr. Aveni stated that for whatever reason the homes on the paper street were never constructed and the road was not put in. This property has always had the M-2 Industrial zoning and industrial uses. The property has been used in the past to store construction materials, the top soil had been stripped off, and currently there is an oil and gas well on the property. It has a historical industrial use and the comprehensive plan shows the property has been used for industrial. The lot they are seeking rezoning has always been used as an access point to the rear lot. Theoretically, access could be achieved from the other lot located at the other end of Stage. Both lots have the same issue of accessing the industrial zoned property through a residentially zoned area. Mr. Aveni explained the ordinance in the City does not allow access to the industrial through the residentially zoned property. He stated they have a proposal for a formal industrial use at this location. Without the rezoning, the property owner has no legal access to the rear lot.

Ms. Shoop asked if both properties shown on the aerial are requesting rezoning. Mr. Aveni indicated that only the one parcel to the east is requested. The other lot has issues relating to the telecommunications equipment located in the right-of-way. He explained the phone lines and electric lines are in the City’s right-of-way. Mr. Aveni explained the lot being requested is already improved and is easier to access. In addition, the other lot was not advertised for a rezoning request. Mr. Aveni added that they are not opposed to having that lot rezoned, just not at this time.

Chairman Fitzgerald asked if the access road is wide enough to handle the traffic onto the site. Mr. Schaedlich responded there is no improved road just a traveled path. Mr. Aveni stated they are not wishing to dedicate a road at this location. They are planning to use the access through this lot as a driveway to get to the property in the rear so it can be developed under the permitted zoning of M-2. Mr. Komjati asked if there was a current plan for this property to determine the type of traffic coming in and out of the site. Mr. Aveni responded the interested buyer would like to use the property for a tree service operation. This would be a staging area for the trucks to come in and then leave for the day. He stated the focus for this meeting is to have the rezoning approved so the property owner can have a permitted use in the rear property. Currently, they cannot use that property unless this parcel is rezoned.

Chairman Fitzgerald asked if the applicant had talked with the City about the requirements that would have to be met if this was opened up in relation to setbacks and landscaping and buffering. Mr. Aveni indicated those have been discussed with the City. They realize that if the requirements are not met then they will not receive their zoning permit. Mr. Aveni commented that is a separate issue than the rezoning. Once the rezoning is determined by the Commission and City Council, then a formal application will be submitted to the Community Development Department.

Ms. Shoop inquired about the statement in the Staff Report regarding Stage Avenue being 22-feet wide. With the proposed use, there will be an increase in the amount of traffic on the street. Mr. Aveni responded that the traffic would only increase incrementally. This should not be an issue since the average will be about 20 trips per day. The types of trucks used for the use outlined in the report are F350's not semi-trucks or flatbeds. The trucks will be pulling tree grinders. The area is surrounded by other industrial users, Painesville Recycling and Extrudex. The truck traffic is already present. The area was examined and while the examiners were on location, there were 10+ tractor-trailers that came down the street. Ms. Shoop indicated that the number might not seem excessive however; there will still be an increase in traffic.

Mr. Aveni indicated it would be helpful if Mr. Bob Walker made a statement to the Commission. Mr. Bob Walker, 5240 Blair Road, Perry, commented that he has been a business owner in Painesville for over 30-years. His current business is located at 284 Richmond Street where Walker Brother's Roofing and Supply are operated. There are between 15 to 25 employees that have been at this location over the years. Mr. Walker indicated they purchased this site for a lumber company. This was an industrial location with good exposure from the freeway. As time went on the lumber industry changed and they decided to do something different. Mr. Walker stated that when the property was purchased the topsoil had been striped. In addition, they added gravel to the existing driveway, which had old gates in place. Before this time, he does not know how the site had been used. The site was used as a construction area for the freeway project and the railroad. Mr. Aveni asked Mr. Walker if the rezoning is not granted what will happen. Mr. Walker indicated the property becomes worthless if the rezoning is not given. The oil and gas well and the sale that is in progress will also be lost. Mr. Aveni inquired about the dollar amount for the oil and gas well. Mr. Walker replied the oil and gas well alone is \$300,000, which does not include the royalties.

Ms. Shoop asked if the split zoning was already in place when the property was acquired. She asked the applicant what his thought process was at that point. Mr. Walker stated that if it was zoned that way he was not aware of it. The driveway was there and the assumption was that it was allowed. He stated that he never had a reason to check on this since it did not seem to be an issue. Chairman Fitzgerald commented that the owner did not know how the site had been used. Mr. Walker replied that he knew there was equipment there but was not aware of the zoning issue. Mr. Aveni asked what the economic loss would be to Mr. Walker if this request were not approved. Mr. Walker replied that he believes it to be 600,000 to 700,000 dollars. Mr. Aveni stated that if the site cannot be accessed through the residentially zoned property due to the zoning regulations then the owner loses the use of that land and any investments placed into it.

Mr. Aveni asked to have his witnesses brought forward to give their expert reports. Mr. Terrance Gerson introduced himself to the Commission. He stated that he is a professional engineer, land surveyor, has been in land development for 25 to 30-years. He indicated that he has city engineering experience; he was Chief Design Engineer in Lake County; and the Village Engineer for Moorland Hills. Mr. Gerson stated that he has been retained by the prospective buyer of the property to locate and develop plans for a site. They have looked throughout northeast Ohio, primarily Lake County. We have located this site, which has a lot to offer if properly zoned in its land mass and the location of the utilities.

Mr. Gerson explained to the Commission that the parcel of land is not part of the rezoning request further to the west. He explained that, it is his opinion, this would not be a good location for the access drive. The parcel has a waterway that runs through it; the location of the parcel to the intersection; the number of utilities that are located in the right-of-way of that parcel; it has never been used in the past for access. Mr. Gerson continued to explain the access through the parcel requested to be rezoned. He commented that the residential lots that front Stage Avenue were rezoned by the City under the City's direction. That rezoning was not done on an owner-initiated request; it was a request by the City to be rezoned. In addition, some of the lots elected not to be included in the rezoning at that time.

Mr. Gerson commented that the staff report states that access for a tub grinding operation would be done at this location. He clarified that tub grinding is old technology and they would be using a horizontal grinder. The horizontal grinder is much quieter and does not create the amount of dust and debris like the tub grinder. Mr. Gerson stated that once rezoned the property can be accessed and the use can be whatever is allowed within the M-2 District. He also stated they have reviewed all of the screening and buffering requirements along with the acceptable noise level requirements. They believe that the operation will be under that regulation and the screening/buffering requirements are not an issue.

Mr. Gerson commented that he was at the site checking the depth of the sanitary sewer in preparation of selecting this property. It was noted that this road is a very heavily traveled truck route and there are not a lot of cars on the street. He stated that there seems to be a load limit on the street that is not enforced. He explained, in his opinion, how the truck traffic uses the road and where they are traveling.

Chairman Fitzgerald asked if there is another way into the site. Mr. Gerson indicated these are the only two reasonable access points to this site. He stated that these are the areas that Mr. Walker has made available to them for purchase. Mr. Gerson stated that the City has allowed the site to be used up to this time. Trucks have been using this historic access to the site. The purpose of the rezoning is to clean up any zoning issues prior to finalizing the purchase agreement.

Mr. Komjati asked about the proposed use and the additional truck traffic. Mr. Aveni stated that it would be twenty trips. The trucks would be the box-style landscaping trucks. Some heavier trucks would be carrying large trees entering and exiting the site. Mr. Gerson stated the project should bring between 14 to 15 jobs. They currently have 17 employees and they have plans to expand. The site is zoned industrial currently and has been for some time. The City's plan does not indicate this area to be changed in the future. They believe this will be an asset to the City and will not be an offensive use.

Mr. Lyons asked if an engineering report was completed for the other lot that contains the utilities. Mr. Gerson replied that he did not do a report, however he did a site visit. His findings are strictly verbal at this point. The telecommunications cabinets would all have to be moved to another location if this lot were to be used for access. Mr. Lyons asked how wide the lot is. Mr. Gerson stated that he has not measured the property but his guess is approximately 50-feet across the narrow portion. The lot is wider than the proposed. Mr. Lyons asked if the purchaser is purchasing the 10-acre portion in the rear. Mr. Gerson replied yes, along with the 0.3-acre piece requesting rezoning. Mr. Lyons asked if they know the ownership history of the parcels prior to 1960. Mr. Gerson responded no, he only knows about the current owner and the purchaser. Mr. Lyons commented that the statement the smaller lot has been historically used is determined by the site visit. Mr. Gerson stated yes, the gate that is there is older than 10-years possibly 20-years based on the rust pattern. He indicated they have a 1967 topographical map of the lot that can be produced which will most likely show the gate in its current location. Mr. Aveni inquired about the position of the purchaser if the rezoning is denied. Mr. Gerson stated that there would be legal recourse from the property owner and the purchaser may become a party in that procedure. Mr. Aveni asked what the alternate use of the property is if the zoning is not changed. Mr. Gerson replied there does not seem to be any other use available and the site cannot be used with this zoning in place. Mr. Lyons asked if Mr. Gerson was testifying as an engineer or a zoning expert. Mr. Gerson replied that he believes he qualifies as both. Mr. Lyons asked Mr. Gerson's knowledge of a nonconforming use. Mr. Gerson indicated he has been the Chairman of the Planning and Zoning Board of Appeals in Hambden Township; presented cases before dozens of communities regarding planning; familiar with the planning process.

Mr. Aveni indicated he has one more witness to bring before the Commission on this subject. He indicated that he distributed Mr. Mark Majewski's qualifications as a planning expert for the record and as Exhibit #3.

Mr. Mark Majewski, 3091 Mayfield Road, introduced himself to the Commission. He gave an overview of his planning experience and qualifications. Mr. Majewski stated that for this case he visited the site, read the City's zoning code, reviewed the city's zoning map, he looked at information regarding the site on the auditor's website on site, he visited with the applicant and their legal counsel, and he visited the City's Planning Department to review the City's Comprehensive Plan. He stated that he received a copy of the City's Staff Report today and has not reviewed it in detail. Mr. Majewski commented that he would like to give his interpretation of that report as he moves forward in his presentation. He stated that the parcel being considered for rezoning is the same as the 10-acre site adjacent to it. The zoning has been in place for a long time. The area abuts other M-2 zoning to both the east and west. The entire neighborhood was at one point completely zoned M-2. The property is in close proximity to State Route 2. The access to the large parcel has been used on the subject parcel for a long time. Mr. Majewski stated that looking at the 2006 Comprehensive Plan it shows the entire piece as residential the large piece is shown industrial. He stated that in looking at the residential piece, it is nonconforming. There is the possibility to construct a home on the subject property even though it is nonconforming. He indicated that the feasibility of constructing a home due to the market is unknown.

Mr. Majewski stated that the residential rezonings on this street that occurred last year at the initiative of the city with the agreement by the property owners imposed new limitations on the property to the rear. The residential zoning line was moved back and now the 10-acre and smaller piece have setback requirements that are different from before the rezoning. He suggested this might be considered as somewhat of a taking of property rights.

Ms. Shoop asked about the implications of not having the rezonings that occurred last year. The property owner to the rear would have less restrictive buffering requirements even though they are used residential. Mr. Majewski responded that as he understands the zoning code the setback is established from the zoning district line. Mr. Schaedlich clarified in this particular case where M-2 abuts single-family the setback is 35-feet from the R-1 district. The split zoning would have allowed the structure to be closer to the single-family homes.

Ms. Shoop commented that she does not agree with the statement regarding creating a hardship for the industrial property owner since if the zoning had been left it would have created an issue for the homeowners there. Mr. Majewski agreed with Ms. Shoop's statement. He stated that it still created an issue for the industrial property with the zoning line being moved to a new location.

Mr. Majewski went back to the staff report that indicates the zoning history on this location. The situation is messy and unusual. It is obvious the City has tried to work out this relationship between the industrial and residential. The applicant wants this rezoning to gain access to their property. This is a basic property right. The only reason they do not have access is due to the city's zoning regulations.

Mr. Majewski explained that if the rezoning were to go through the owner would be allowed to access the rear property. The owner could then locate and construct an access drive subject to site plan approval. The installation of buffers and other requirements. Zoned M-2 he stated that he would argue that it is too narrow for other uses. It is only 50-feet wide, there are setbacks required to build an industrial building, storage unit, or even for parking would be tough. It is pretty restrictive; there is plenty of land in the back to place these types of uses. This should be kept in mind. The dimension of this lot would help protect the surrounding residential from the owners more intense industrial uses if rezoned.

Mr. Majewski read the staff report and would like to comment and make suggestions on a few items. He stated that in terms of the residential rezonings, the rezoning may have brought those lots into compliance with the area requirements but they are still nonconforming lots in terms of width and setbacks. They are still not optimal in terms of standards of zoning. The Land Use Map in the Comprehensive Plan shows this small lot as continued in residential use. It also does not show access to the rear lot. The large area in the back is shown as a continued industrial use. It has been testified that the lot cannot be used unless there is access. Given the current zoning regulations this site is not consistent which is the reason for the rezoning application. If there is concern over one or more uses on the back lot that is more of a concern to be dealt with at a later date. The intent is to ensure the

M-2 zoning can be used and an application will have to come forth to the city. The city will have to make sure that the use complies with the standards and regulations that are in place. The staff report indicates that this use will significantly impact the area. Mr. Majewski explained that he cautions in using this language. There will be an increase of some type in the vehicle volume on this driveway. Any use that goes onto vacant property has an impact in relation to traffic whether it is a home or a business. They all generate noise, dust, and fumes. Mr. Majewski gave an example of 10-acres of residential use at 10-units per acre. That use would generate 6 to 7 hundred trips or more into that area. The volume of impact from an industrial use is much less than that of a residential project. That along with the screening and buffering required makes it even less.

Mr. Majewski stated that this is a complex-zoning situation. There is a residential neighborhood in the middle of an industrial area or maybe it is the other way around. Regardless, the industry is there. The zoning has been in place for a long time. The property owners wish to have access to the 10-acre industrial piece in the rear. They own land that could be suitable for access to that land. The rezoning of the property makes it possible for a business to be established, for jobs to be created, and for taxes to be paid. This is consistent with what the Comprehensive Plan states. The land cannot be used unless access is granted. Mr. Majewski stated that it is his opinion that the Planning Commission recommend approval and City Council approve this request.

Mr. Aveni asked Mr. Majewski if this request was reasonable to approve. Mr. Majewski responded based on the discussion he just gave, yes. Mr. Aveni asked what he thought about this if denied. Mr. Majewski stated that there would be no access and the property would be unusable. Mr. Aveni asked about the economic impact in terms of financial loss. Mr. Majewski commented that the property would lose value to both the city and the owner because it would never be allowed to be developed.

Mr. Lyons asked if Mr. Majewski had seen the tax map that was part of the City's report. Mr. Majewski responded no, he did not have a copy. Mr. Lyons asked if he was familiar with the old Lake County tax maps that were available at the auditor's office. The transfers of ownership were placed onto the maps when changed. Mr. Majewski replied yes. Mr. Lyons referred to the tax map that was part of the city's report. There was discussion of the map and the location of the lots. It was clarified that the map is a tax map but it was never platted. Mr. Lyons common ownership 1976 on the two parcels. The access prior to 1976 would have been through the other parcel fronting on Stage. He explained when the city changed the parcels that front Stage Avenue to the residential zoning in 1960 did that cut off the property owners legal access. After discussion it was determined that there was legal access to the lot due to its nonconforming status. The law does not allow the taking of an access to a property. There was continued discussion regarding putting in a dedicated road to access the industrial property in the rear and the ability to do so through a residential area. The access to the property can be done through a dedicated right-of-way. There was discussion about the cost of putting in a dedicated road on the westerly parcel and whether or not it could be done. A traffic study needs to be done in order to determine if this would be an appropriate location for a road.

Chairman Fitzgerald asked if the applicant has access to their property even through residential. Mr. Lyons stated that he believes that through the westerly lot they have legal access to the property as a preexisting nonconforming use. The city cannot zone away the right to access the parcel. They had common ownership for a long time. The other parcel became under common ownership in 1976 if you look at the tax map submitted as the exhibit. Mr. Aveni stated that the city's position is that irrespective of the current application, we could use the westerly lot as access to the rear site. Lyons said the city's position is that you have access to your property through the westerly lot. However, not through the Stage Avenue since it has not always been owned by the property owner. Mr. Aveni restated that the westerly lot could be used; seek another rezoning on that lot. Lyons said that he does not believe that lot would need to be rezoned in order to use it.

Ms. Shoop asked is there a position that one lot is better than the other. It was explained that the owners have access to their lot. The other issue is the zoning inconsistency. The applicant wants to have the lot rezoned to clean up the zoning issue. The industrial use in the rear cannot be used through the residential lot. Mr. Aveni the westerly portion lot has that same issue where it is zoned residential. Mr. Lyons commented that the westerly lot is the lot that has common ownership with the industrial site behind that area. Mr. Majewski stated that his opinion is by using the parcel that is seeking rezoning the area would be better served. The location of that lot would mean less traffic on the street; the location is level and square due to its distance from other intersections; it has been used in the past for access; the other lot has a number of limitations. He suggested that a traffic study

would be the tool to finding out which is best. Mr. Lyons stated that he does not disagree. A decision still needs to be made, he pointed out the legal aspects regarding access.

Chairman Fitzgerald asked if there were any comments from the audience. Ms. Dorothy Wise, 140 Stage Avenue, stated her property is right next door to this lot. She has an issue currently with the trucks entering the site. She asked what would be done with the property so the impact would be lessened to the neighbors. Mr. Aveni indicated the property owner would be willing to provide fencing, screening, and noise abatement. This would be required as part of the permitting process from the City.

Ms. Gisela E. Gasztonyi, 137 Stage Avenue, indicated that she wrote a letter to the Commission. Chairman Fitzgerald replied that they had copies of the letter. She indicated that she has lived at this property for a long time and she would like to keep the street as it is. Chairman Fitzgerald stated that unfortunately the property owner has to be provided access to their site. He asked the secretary to read the letter submitted by Ms. Gasztonyi. The letter was read for the record and will be placed in the file.

Chairman Fitzgerald asked if there were any other questions or comments from the audience. There being none, he asked if members of the Commission had any questions. Mr. Komjati commented that he wanted to be clear about the need to access the site. The question is which area is best suited. Chairman Fitzgerald responded that is correct. The access has to be provided no matter what and if they are required to buffer and screen the area, it should be better than it is currently. Mr. Schaedlich explained the buffer and screening that would be required on the site. He indicated this would also be required for the access drive area.

Ms. Elizabeth Peters, 242 Mentor Avenue, asked what the decibel levels of this machinery are and the hours of operation. Chairman Fitzgerald commented that this is a rezoning hearing. The operation would be located in an industrial area. Whatever is allowed by code the owner will have to comply. Mr. Gerson responded by explaining the city established decibel levels and how those would be at an operation of this type. He stated the current noise coming from the freeway would have more of an impact than this operation.

Chairman Fitzgerald asked if there were any other comments or concerns. There being none, he asked for a motion on this item. Motion by Mr. Komjati, seconded by Mr. Temming to favorably recommend Rezoning Application No. 77-12 to rezone Parcel Number 15-C-023-0-00-009-0 on Stage Avenue from R-1 Single Family Residential District to M-2 Industrial District. On roll call, Mr. Komjati, Ms. Shoop, Mr. Temming, and Chairman Fitzgerald answered "yes". Motion carried.

Chairman Fitzgerald indicated a letter has been submitted to the Planning Commission on the next item on the Agenda. The applicant for Rezoning No. 78-12 has asked that this matter be tabled. Chairman Fitzgerald asked the secretary to read the notice since this item was advertised as a public hearing item.

Rezoning Application No. 78-12

Location: Permanent Parcel No. 15-C-019-0-00-005 & 006 (642 Mentor Avenue)

From: R-1 Single Family Residential District and B-1 Business Residential to B-2 General Business District

An application has been submitted by Mark Havel and Martha DiCello, Trustees for the rezoning of Permanent Parcel Numbers 15-C-019-0-00-005 and 006. Parcel Number 15-C-019-0-00-006 is currently zoned R-1 Single Family Residential and approximately 84-feet of Parcel Number 15-C-019-0-00-005 is also zoned R-1 Single Family. The remaining portion (123± feet) of Parcel Number 15-C-019-0-00-005 is currently zoned B-1 Business Residential. The applicant would like to rezone the two Parcels to B-2 General Business District. The rezoning of the parcels would bring the entire site into one consistent zoning classification.

Chairman Fitzgerald asked if anyone was present that would like to speak or comment on this item. There being no discussion, he asked for a motion to table this item. Motion by Ms. Shoop, seconded by Mr. Komjati to table Rezoning Application No. 78-12 for 642 Mentor Avenue at the request of the applicant. On roll call, Ms. Shoop, Mr. Temming, Mr. Komjati, and Chairman Fitzgerald answered "yes". Motion carried.

ADMINISTRATIVE REPORT:

Chairman Fitzgerald asked for the Administration to give a presentation on the proposed zoning code modification.

Zoning Code Modification – Proposed Inn Definition/Section 1143.07; Utility Structures.

Ms. McMahon indicated City Council has requested the Planning Commission provide a recommendation on the inclusion in the R-2 Multi-Family Zoning District of an Inn use as a conditional use. This review was the result of the Planning Commission rezoning of the Steele Mansion property from the R-2 to the B-1 to attempt to accommodate the development of an Inn by using the similar use provision of the B-1 zoning district. After review of the various stipulations and conditions established by the Commission, the City Council requested the Administration to consider turning the criteria into standards that would result in a conditional use in the R-2 district.

Ms. McMahon stated the draft of the legislation was given to the Commission to review that would establish the standards for considering an Inn in any R-2 zoned property within the designated location. The approach to the Inn standards are based on the Bed and Breakfast standards but expanded to permit a more intensive type of development that is between a Bed and Breakfast and a Hotel. The accepted locations are on major thoroughfares or in historically or architecturally significant structures. The parcel is to be of adequate size to accommodate the parking for the uses. The maximum number of rooms is 20 and the owner need not reside on the premise but they may. Support commercial uses may be located on the first floor along with support food service operation. The facility is permitted to hold special events, both inside and outside provided there is adequate space as well as business meetings based on the occupancy standards and parking availability. The objective of the standards is to provide a guideline for review of a specific location resulting in the intensity or magnitude of the use being driven by the specific site.

Ms. McMahon explained the various sections of code that would be modified. Chairman Fitzgerald asked where this is currently in the code. Ms. McMahon explained this is a new definition with new standards. This new use had come before the Commission. There was no specific definition for an inn. The only way for a use of this nature was to have it located in a commercial district with a similar use designation granted by the Planning Commission as a conditional use. Ms. McMahon stated that is what happened with the Steele Mansion application that was recently reviewed.

Chairman Fitzgerald asked why this is so different from an apartment use. Ms. McMahon explained that apartments have different circumstances. Those are the tenure of the tenant; the square footage requirements for the units; independent operations for cooking; and bathroom facilities. Chairman Fitzgerald stated that either way this has to be acted on. Ms. McMahon stated yes. The thought was rather than trying to force this use into a category. This was asked to be looked at as inns as a separate use, identify standards and guidelines; keep it as a conditional use to evaluate each application based on the size of the home and the area where it will be located. Each of which can change what the Commission would like to see as conditions to help protect the neighborhood.

Ms. Shoop asked if the R-2 zoning district is the place to put this use as a conditional use. Ms. McMahon indicated that when the City looked at different communities and how they handled inns, it was found they are located in residential areas. The city looked at twenty-two different codes. Most have them located in residential areas. They are normally in large old homes not in downtown commercial areas. The exterior of the structure is meant to look like a home. This was to provide a different type of lodging experience much different from a motel or hotel. This would be handled similarly to a bed and breakfast, which is currently a conditional use in the R-2 district. The difference is bed and breakfasts are smaller in scale. The inn is a larger use but does not require it to be owner occupied.

Ms. McMahon stated she wanted to be sure the Commission understands that this is not for a specific application. This is to establish standards, guidelines, and the process in which an inn could be included in the zoning code. After that happens, should anyone who has property that meets these guidelines would want to make an application, that application would be reviewed separately and individually based on the guidelines set forth here. A public hearing would be held and then go to City Council for their review and consideration.

Ms. Shoop questioned the wording on the proposed regulations and the staff report that was done for the Steele Mansion. She stated that once the inn definition and the regulations are put in place how that will effect the stipulations that were placed on the Steele Mansion. Ms. Shoop indicated that she liked the stipulations that were placed on the inn. Can those same stipulations apply with the new regulations in place. Ms. McMahon indicated the proposed regulations are guidelines only. The Planning Commission has the ability to put further restrictions on any use if it so chooses. The Planning Commission can also waive any requirement that is in the regulations. Nothing that was put

into the proposed regulations is more restrictive than the stipulations placed on the Steele Mansion request.

Ms. Shoop asked about the liquor license issue. Ms. McMahon stated that liquor licenses are issued by the State of Ohio, not by the City of Painesville. The State of Ohio has their regulations for obtaining a liquor license. Licenses are only issued to commercial businesses. Ms. McMahon stated that once an inn is approved that entity would have to apply for this license. The regulation within the proposed code is that liquor can be served to guests, not to operate a bar. Once an application has been obtained, the State notifies public institutions and churches about the application. The issue then goes before a hearing board where the public can object to the issuance of the permit. Ms. McMahon stated that process is different and separate from the conditional use permit application. The conditional use permit regulations can be modified to allow a certain type of liquor permit for the use that is being requested at that time. She stated that based on the research that the city did on the inns it was found that most inns have a permit to serve alcohol to their guests.

Ms. Shoop asked what the expected outcome on this issue is. Ms. McMahon stated that Council has referred this back to the Commission. Any change in the code regarding land use is required to have a Planning Commission recommendation. This text amendment would require a vote or recommendation before City Council could participate in discussing this item.

Chairman Fitzgerald inquired if this ordinance would only apply to current structures. He asked if a structure could be built as an inn. Ms. McMahon stated the code indicates this is for an existing structure. There was discussion about the possible location of an inn based on this proposed regulation.

Chairman Fitzgerald explained that under normal circumstances, administrative report items are not opened up for general discussion. He indicated that due to the number of people still present he would allow comments or questions from members of the audience.

Mr. Alan Watson, Parkview Drive, asked to address Ms. McMahon. He stated the proposed ordinance is for a general use as an inn. If someone decided that they wanted to turn their existing home into an inn, they could apply for a conditional use permit, correct. Ms. McMahon replied, yes. She added that conditional uses go with the applicant not the property. Mr. Watson stated that the Steele Mansion owners would now have to come back and ask for a conditional use permit to operate as an inn. He stated that he read the ordinance. He questioned the business meetings and the hours end at 6 PM and he wondered if this could be extended to 8:30 or 9 PM to allow more businesses the opportunity to utilize the structure. Mr. Watson also questioned the special events only being allowed on Friday, Saturday, and Sunday. He felt that rather than restrict it to a day of the week, rather the number in a month that can be held. He used Memorial Day as an example since it falls on a Monday and the Fourth of July could be any day of the week. Mr. Watson agreed with the regulations he just felt that some of them might need more flexibility.

Mr. Jamie Callender, 9920 Ashwood Trail, Concord, stated that he is an attorney. He stated that his parents live next door to the facilities. Bob Myers is part of the legal team they have assembled to work on this issue. Mr. Callender asked to verify that there was not going to be a vote on this issue tonight. He stated they were going to have a court reporter present for legal proceedings. Mr. Meyers was at city hall today and received a copy of the agenda. They called off the court reporter and they have stopped their research. He asked the minutes reflect they are uncomfortable and this would be a deprivation of due process since they cannot establish the record they need for this issue.

Mr. Meyers stated that whatever it takes to declare an emergency, he would like to get the minutes as soon as they are available. He apologized to the secretary indicating that he was planning to visit the office to look through the files; however, after conversing with Mr. Schaedlich he changed his mind.

Mr. Lyons stated that if you want to make a record and there is no court reporter, the Commission should be asked if they wish to go forward. He stated that he spoke with Mr. Meyers yesterday regarding the agenda. Mr. Lyons indicated since this is a code amendment a public hearing is not needed. Mr. Meyers told him that they would probably have a court reporter at the meeting. Mr. Meyers stated that he did order a court reporter however, he canceled this afternoon. Mr. Schaedlich replied that he spoke to Mr. Meyers about the rezoning application. Mr. Schaedlich informed Mr. Meyers that had been withdrawn. They spoke of the mansion and not this item. Mr. Meyers stated publicly that Mr. Schaedlich is an honorable man and there was a misunderstanding.

Mr. Komjati asked what the need was for a court reporter. Mr. Callender indicated they believe there is a taking of property and this is spot zoning. Mr. Lyons stated that it is his understanding that the original rezoning request has been withdrawn. There is no rezoning. The only rezoning that would happen would be the code amendment. Mr. Callender stated that he believes the proposed code

amendment is a fast spot zoning. He indicated that the amendment has been specifically designed for the Steele Mansion. Mr. Myers commented that he believes the Steele Mansion zoning application will be standing in line when this ordinance is certified to go to Council.

Mr. Lyons stated that Mr. Callender and Mr. Meyers have asked the Planning Commission to continue the discussion on the code amendment so they may have a court reporter present. Mr. Lyons explained that it is up to the Commission to determine if that is what they would like to do.

Chairman Fitzgerald asked Mr. Callender to continue. Mr. Callender indicated they were aware the code amendment was on the agenda for discussion. Chairman Fitzgerald indicated the item is there for discussion and will be voted on.

Mr. Callender stated that they object to a vote being done on this item. They have a number of issues with the proposed amendment. They believe this is a spot zoning issue. Mr. Callender read the definition of spot zoning indicating that spot zoning is universally recognized as an abuse of zoning power. He commented that this is a little bit troubling. This zoning change will allow alcoholic beverages to be served at the inn. This appears to allow a bar, nightclub, party center, meeting center, which would be the types of uses for a business uses, and not residential uses.

Chairman Fitzgerald indicated that bars are not allowed in this amendment. Mr. Callender responded by stating it does. Chairman Fitzgerald stated that the amendment states for guests. Mr. Callender argued that it does not state for paid overnight guests. He gave a scenario where someone who would stay at the inn to enjoy Painesville could have a bottle of wine. They do not have a problem with that. He stated this is very different than allowing a party center. Chairman Fitzgerald stated the definition of a guest is someone who is registered and staying there. There was discussion about the definition of guest being added and the possibility of getting different wording in the code amendment. Mr. Callender indicated a solicitation had gone out from the City looking for zoning ordinances to allow quasi-commercial uses in a residential district. The ad specifically mentions the Steele Mansion, references, and links to their Facebook page. He stated that he does not think they cannot say this is drafted just for the mansion.

Chairman Fitzgerald stated that there are more instances this could be used for than just the mansion. Mr. Callender read the solicitation that was placed on the web for the Commission. There was discussion regarding the solicitation being more for an example.

Mr. Callender continued by stating that as a neighbor, there is an ability to have more than a bed and breakfast style operation. Prior to the structure burning this was a 13 to 15-unit apartment complex. They understand that the owners do not want to live there. They understand the Commission is struggling with a way to allow them to accomplish this without disrupting the character of the neighborhood. He stated that everyone there seems to care about preserving the character of the neighborhood. This is a great place to visit. Allow guests to come and view this historic structure is not objectionable. What is objectionable is putting something there that is tantamount to a commercial use. When you read this proposed ordinance, it allows alcohol with a liquor license. This would allow a party center, bar, business conference center. These should not be allowed in a residential neighborhood. He stated that this is not what the residents want and he is not sure if that is even what the owners want. This is inappropriate.

Chairman Fitzgerald asked Mr. Callender if he was representing one person or the residents of the area. Mr. Kip Smead stated that he agrees with Mr. Callender. Mr. Callender replied that he represents more than one person. He stated that he grew up here. He is the past president of the Lake County Historical Society and saving historical sites is a passion of his. He stated that when he heard that someone had purchased the historic Steele Mansion he was very glad. They have done a remarkable job saving the structure. The concern is what is going to happen. Is it possible for this to turn into something that is outside the normal residential character. Mr. Callender suggested making sure the guests being served are overnight guests. By changing the wording, it could help in clarifying. In addition, adding a paragraph that an inn is not intended to be used as a party center, bar, nightclub, etc. for any purpose other than to be used as an inn. This would clarify the intent of the inn.

Ms. Shoop presented a scenario of having a wedding at an inn with family who would be invited but not paid guests, how would that work? Mr. Callender stated that a wedding reception would be something to be held at a party center. This is something they would like to avoid. Ms. Shoop said it is only 50 people, party centers are for much larger groups. She indicated that she understands what Mr. Callender is saying, however there needs to be the ability to accommodate small events like a wedding party. Mr. Callender stated the character of the party is what really would be the issue. The problem is there is no way to control what type of event that would be allowed. By not having

limitations, the event can get out of control. The City of Painesville code allows bed and breakfasts and indicates they are consistent with R-2 zoning. Mr. Callender stated that bed and breakfasts are five rooms and owner occupied; the specific limitations are issues for the owners of the mansion. We are not saying to lift those restrictions, whether bed and breakfasts are redefined or a new category is created. What you are trying to get at is trying to utilize this facility as a bed and breakfast.

Mr. Lyons asked about the suggested changes submitted by Mr. Callender that modifies the definition; if the Commission agrees with those changes would the Mr. Callender be okay with the use. Mr. Callender responded conceptually yes, as a neighbor no, you do not want anything-large going in next door. At least you would be consistent and would take away the legal argument. Mr. Lyons stated if the legal argument were taken away then there would be no legal case presented. Mr. Callender stated that it would be much more difficult to and if they did, it would be a waste of legal fees. He stated it would significantly lessen the likelihood of the City being involved in litigation.

Mr. Lyons asked what changes Mr. Callender would want the Commission to consider that you say would take away the legal arguments. Mr. Callender handed Mr. Lyons a list of the suggested changes to the Commission. He indicated the changes are more consistent with the residential zoning classification language from other cities than what the Commission has before them. He stated that the proposed language they currently have has seven or eight different cities zoning ordinances; Dundee, Newport, Lafayette, and Grand Rapids. Mr. Lewis indicated that there were probably 25 different cities. Mr. Callender indicated that it looked like those four were selected. He stated that he believes each of those cities the inn is in a commercial or business district rather than the residential. Mr. Callender stated there are some ordinances that allow them in residential but the language was more restrictive like a bed and breakfast.

Chairman Fitzgerald asked if a bed and breakfast could obtain a liquor license. Ms. McMahon replied that liquor licenses are not regulated through the city. She stated there is a hotel license, which has a number limit placed on it. She indicated that a bed and breakfast probably could obtain a liquor license. There was discussion about how bed and breakfasts can allow liquor at the establishment without having to have a license.

Chairman Fitzgerald indicated he did not see the issue with the serving of alcohol. Mr. Callender stated that at a bed and breakfast you are only serving to overnight guests. In this situation you are allowing events to have alcohol like would be allowed in a party center. Mr. Callender concluded by stating this is the point we wanted to make.

Mr. Kip Smead, 343 Mentor Avenue, stated he has been selling real estate for 33 years. He understands the city wants to do this. They have made every effort to push this thing forward. If that is what the city wants, he has a concern that this will have a major impact on the neighborhood. It is going to be a commercial area in the future. This is a B-3 business is trying to be put through residential. He stated he knows this town pretty well. He looked at the regulations. He asked that someone give him an example of one other parcel in the city where this could apply. Ms. McMahon stated the corner of Walnut and Bank Street. Chairman Fitzgerald indicated the property behind the wall on Mentor Avenue and Newell Street would have the minimum lot size. Mr. Smead stated this is all about the Steele Mansion. There will be no other inn. The property around it will lose value. He stated the one thing that people do not want to live next to is a commercial business especially if they server alcohol. He stated there would be damage to the property values. If this is what you want then refer to the 1993 comp plan where it calls for the entire area to be commercial. Mr. Smead stated that the city should rezone the entire area instead of spot zoning to give the neighbors the opportunity to get something for their property. He stated he is against this use in a residential area.

Mr. Angelo Cimaglio, 477 Owego Street, stated that he feels sorry for the Commission since they have gone through this already. It was sent to Council now it comes back to the Commission. As far as that neighborhood, explain the half-way house, the assisted living house, the doctor's office, and the apartment buildings, how is that a residential area. He stated someone said the property values would go down. The structure has been falling down for the last ten-years. Was the property value enhanced by this situation? The owners have saved this structure. They are not asking to put in the golden arches and a drive-thru window on this property. This will be a quality establishment and the property values will go up. Mr. Cimaglio stated that he believes they have already gone up from the work already done on the mansion. This is a step forward for the area and for the city. He asked that these people be allowed to continue.

Mr. Anthony Torre, 158 Sanford Street, stated that he was born and raised in Painesville. He stated that when he was a teenager he delivered papers on busy streets in downtown. He wants to see Painesville thrive again. You have to get business and people into town in order to do that. Mr. Torre stated the Commission is here to make that happen. We need this kind of business in Painesville.

Mr. David Katila, 319 Mentor Avenue, stated that he understood that areas designated as R-1 and R-2 was to protect residential homeowners from commercial establishments being located in those areas. This proposed change will affect a significant number of residential homes in the city of Painesville including the homes in designated historical areas. Although this proposed change is written as general guidelines for establishing an inn, it appears to benefit only the Steele Mansion with little benefit to a homeowner. He is not opposed to saving, restoring, or remodeling the Steele Mansion property but he is opposed to it being regarded as a residential inn when it is attempting to become a commercial business in a residential neighborhood.

Mr. James Callender, Sr., 362 Mentor Avenue, stated that he feels violated by the city. His input has been almost nothing. Every time he has asked for something, he has not been able to get it. When things went wrong he never got any help from the city. He stated that he and his wife have put fourteen years of their lives into their home and property. He feels that he has no support. He stated that he is not litigious, he has never filed a lawsuit in his life, but he does not believe the city has ever listened to them. He believes that he has been lied to by the city and asked that they listen to him now. We are willing to compromise to allow a bed and breakfast that has extended things. A party center and liquor license should not be allowed.

Mr. Art Shamakian, 1664 North Shore Drive, stated that the restrictions put on the inn, those are restrictions. These are more than the ones they wanted imposed on them. They will be restricted from what they really wanted to do. The City did not give the definition of an inn free rein.

Mr. Callender Sr. asked if this should be voted on tonight. Chairman Fitzgerald indicated the Commission would decide that.

Chairman Fitzgerald asked if there were any comments from Mr. Lyons. Mr. Lyons stated that he disagrees with Mr. Callender and Mr. Myers that this is spot zoning. This does apply to other places according to what the administration indicated there are at least three. In terms of what is before the Commission, a decision needs to be made if it should be voted on or left on hold. Mr. Callender has given the Commission some wording and the Commission needs to decide what is appropriate.

Chairman Fitzgerald asked for discussion from members of the Commission. Mr. Komjati indicated that this issue should be moved forward. This could be around for years if it is not acted on. Chairman Fitzgerald indicated that once City Council receives the recommendation they have the ability to modify the wording. Ms. Shoop stated she agrees with moving forward on this issue.

Chairman Fitzgerald asked for a motion. Motion by Mr. Komjati, seconded by Ms. Shoop to approve the proposed inn definition as submitted. On roll call, Mr. Temming, Mr. Komjati, Ms. Shoop, and Chairman Fitzgerald answered "yes". Motion carried.

Chairman Fitzgerald asked if there were any other matters to be discussed. Mr. Schaedlich replied that on the agenda is a proposed text amendment dealing with utility structures. The Administration asked the Commission to review the proposed text amendment dealing with Utility Structures and asked that it be reviewed at the next regularly scheduled meeting. All members agreed.

OTHER MATTERS THAT MAY PROPERLY COME BEFORE THE PLANNING COMMISSION:

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

ADJOURNMENT:

Chairman Fitzgerald asked for a motion to adjourn. Motion by Mr. Komjati, seconded by Ms. Shoop. Motion carried, the meeting was adjourned.

Lynn M. White, Secretary

Thomas Fitzgerald, Chairman