PLANNING COMMISSION MEETING

October 13, 2011

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, Mr. Andrew Eade, Mr. Brian Temming, Mr. David Komjati, and Chairman Thomas Fitzgerald. Absent was Ms. Christine Shoop. 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 Planning Commission Meeting of September 8, 2011. There being none, he asked for a motion. Motion by Mr. Komjati, seconded by Mr. Temming, to approve the Minutes as submitted. All members present said "aye". Motion carried.

Chairman Fitzgerald asked the secretary to read the Public Hearing Notice.

NEW BUSINESS: (Public Hearing Item)

REFUSAL NO. 2210 CONDITIONAL USE PERMIT REQUEST
Applicant/Owner: Gloria Torres
Location: 573 East Erie Street (Parcel Number 15-A-008-A-00-006-0)
District: B-1 Business/Residential District
Section: 1143.06 (a)

The City of Painesville has received an application from Gloria Torres for a Conditional Use Permit. The applicant is proposing to utilize a Single Family Home as a residence at 573 East Erie Street (Permanent Parcel Number 15-A-008-A-00-006-0). The property is located in the B-1 Business/Residential District. Section 1143.06 (a) requires a conditional use permit for Residential uses as permitted in the R-2 District to be approved by the Planning Commission.

Chairman Fitzgerald asked if the applicant was present. Mr. Angel Nunez, 495 East Erie Street, indicated that he is a neighbor of Ms. Torres. He stated that Ms. Torres wants to live in the house as her primary residence.

Chairman Fitzgerald asked if there were any comments from members of the Commission. There being none, he stated that he did not have a problem with granting a conditional use permit for a single family home. Mr. Komjati stated that it would seem appropriate to have the home used as it was intended.

Chairman Fitzgerald asked if the Administration had any additional comments. Mr. Schaedlich explained the photographs that were included in the packet. It was unclear as to which home was the property under discussion. Mr. Schaedlich indicated it was the red house.

Chairman Fitzgerald indicated that at this time he would open up the meeting for comments from the public. He stated that anyone wishing to speak on this request should stand and state their name and address for the record.

Mr. Barry Usko, 763 North Avenue, indicated that he represents the Western Reserve Railroad Association [WRRA]. He stated they own the property across the street. He indicated they would like the request denied. Mr. Usko stated that the railroad building is the oldest building in Painesville. They would like the railroad building to become the anchor for this area of Painesville. The WRRA vision is to have the street become a retail and commercial area. They have a plan in place to request this area be rezoned to have that happen. This will be done to bring more people into Painesville. They do not want the single-family homes in the area.

Mr. Schaedlich was asked to clarify the request in front of the Commission for Mr. Usko. The home that is requesting a conditional use permit is located on East Erie Street. It is not near the train station on Railroad Street. Mr. Usko apologized and indicated they did not have an objection to the request. He asked that sometime in the future the WRRA Board would like to address the Commission with their vision and plan for Railroad Street. Chairman Fitzgerald stated that Mr. Usko could speak to the Administration and make that request.

Chairman Fitzgerald asked if there were any other comments. There being none, he asked if members of the Commission had any additional comments or questions. The Commission indicated they were comfortable with the request. Motion by Mr. Temming, seconded by Mr. Eade, to approve

Refusal No. 2210 for a Conditional Use Permit allowing a residential use at 573 East Erie Street. On roll call, Mr. Komjati, Mr. Eade, Mr. Temming, and Chairman Fitzgerald, answered "yes". Motion carried.

ADMINISTRATIVE REPORT:

- **Nonconforming Uses – Potential Rezonings** – Discussion/recommendations.

Mr. Schaedlich gave a brief presentation to the Planning Commission. He outlined the five areas that were previously discussed with the Commission. He stated that he has received input from two of the property owners involved in the rezoning process. Both property owners have indicated they are in favor of the rezoning of their property.

The Planning Commission agreed to schedule the Public Hearing on the areas discussed for the next regularly scheduled Planning Commission Meeting of November 10, 2011. If approved, the rezoning requests will be forwarded to City Council for their action.

- **Nonconforming Use – potential code change** – Section 1139.03.

Ms. McMahon explained that City Council has asked that this code modification be given to the Planning Commission for their review and recommendation. There were three areas discussed by City Council that they would like changed. This request stemmed from the recent nonconforming use rezonings that have gone before City Council, similar to the item just discussed. The discussion was regarding the residential uses that are currently nonconforming and the impact of them remaining nonconforming. The code currently states that any nonconforming structure that is destroyed by any means more than 50% of its replacement cost shall not be reconstructed except in conformity of the zoning district. The request is to change that provision to protect these homes in the interim while the City implements the rezoning changes.

There was discussion about the intent of nonconforming uses and the code language that is in the City's Zoning Code. The City's Comprehensive Plan determines the zoning districts. The districts then would eventually contain uses that are allowed to exist in that district. The nonconforming code section being discussed is put in place so that over time the uses that are not desired eventually disappear.

Ms. McMahon explained City Council has asked that this code section be modified. It was questioned what the impacts would be if the phrase was eliminated. If eliminated, any nonconforming use can be rebuilt in any district. Once a property is rebuilt it is hard to make them conforming. There had been some additional discussions about making this only for single-family and not commercial uses. The Law Director indicated that was not a reasonable way to approach this situation.

Chairman Fitzgerald asked why this is an issue for Council; is this for historic purposes? Mr. Lyons indicated that it is not. The City has gone through quite a process to identify a number of nonconforming uses in the City. This is a significant number. The property owners have been notified and the process is now to rezone many of those properties. Mr. Lyons commented that the opinion might be that until the process is done if something were to happen to those properties, this change would allow the property to rebuild while this analysis process is taking place.

The question was asked about after the process of rezoning is completed, would this language reinstated. Ms. McMahon replied that would be up to the Commission and City Council. The intent is if it is taken off the books and once the process is finished, the Code would have to be amended again to reinstate the provision.

Mr. Temming commented that if something did happen in the interim the property owner could apply for a zoning change on that property. This allows the property owner to go forward with another option if they need to rebuild. Ms. McMahon stated that is correct. Mr. Temming indicated that he did not see the need to remove the nonconforming section of the Code. Mr. Lyons commented that in terms of that process, in the example of a fire at the property, rebuilding could not take place for a couple months due to the rezoning procedures.

There was continued discussion about the pros and cons of revising this code section. Mr. Lyons stated that this clause has been in the Painesville Code for a long time and it is a standard clause found in most zoning codes. The question was asked what the down side of removing this clause. Mr. Lyons responded that the down side would be if it were not reinstated. The other option is to adjust the percentage for reconstruction from 50% to 75% destroyed in order to rebuild the structure. Chairman Fitzgerald indicated that he did not see an issue with removing this clause as long as it is put back in the Code.

Mr. Temming asked how many times this clause has created an issue for the residents. Mr. Schaedlich indicated that there was an instance with a property on North St. Clair Street with three homes. There was a catastrophic fire in one of the homes, and that house could not be rebuilt. Mr. Temming stated that he was okay with the change but only on a temporary basis.

Chairman Fitzgerald asked what the time frame is for completing the nonconforming rezonings. Ms. McMahon stated that it should be about fourteen months before they are completed. Mr. Lyons commented this proposal did not come from the Administration. It was asked by City Council to have the Planning Commission review the code section for some guidance.

Mr. Barry Usko, 763 North Avenue, stated that this code section should only be applied to current buildings and facilities. He asked how that would affect new construction if this code section were removed. It was explained that the nonconforming use would not apply to any new construction.

Chairman Fitzgerald asked if a vote from the Commission is necessary on this item. Mr. Lyons responded that a recommendation from the Commission is all that is needed. Chairman Fitzgerald asked for a motion regarding the discussion of Section 1139.03. Mr. Lyons commented that once the Code is changed and then changed back there could be an issue with setting a precedent by allowing it for some and not all.

The procedure for code amendments was discussed in relation to Planning Commission recommendations and recommendations by City Council. Mr. Josh Horacek, 239 Settlers Lane, suggested that instead of removing the code section all together why not have the Board of Zoning Appeals grant a variance for the usage so it could be decided on a case-by-case basis. Ms. McMahon responded that use variances are prohibited in our Zoning Code.

Mr. Komjati indicated that he thinks about what happened in Fairport where multiple homes were destroyed by a gas explosion. If something were to happen of that nature in the City, it would be hard for those residents to rebuild. Mr. Temming commented that if that were the case he believes the City would take measures to push something like that through to allow the residents to get back to normal quickly. Mr. Komjati stated that they would still not be allowed to be rebuilt. Mr. Schaedlich explained that nonconforming uses are uses that should eventually disappear since they are uses that do not fit the district in which they are in. If you allow them to rebuild then you have a brand new structure that will exist for a long time. This will make it very difficult to get rid of nonconforming uses in general.

Ms. Jeri Krotz, 869 Bank Street, asked how the property became nonconforming when it was there before the residents, why not the other way around. She indicated that she has talked with Mr. Schaedlich about how these properties were changed to nonconforming 25-years ago. Mr. Schaedlich clarified that the zoning was changed which then made them nonconforming. There was discussion of how the zoning code use to allow a variety of uses then was changed into more specific district with limited uses for each. There was lengthy discussion about different areas in the city and the zoning changes that have occurred over the years. Ms. McMahon suggested that the Commission consider this item more thoroughly while the Staff collects additional information from other entities and their approach to nonconforming uses.

There being no further discussion, Chairman Fitzgerald asked for a motion. Motion by Mr. Komjati, seconded by Mr. Temming, to table the discussion on the proposed changes to Section 1139.03 and requested the Administration to complete further research on this issue. On roll call, Mr. Temming, Mr. Komjati, Mr. Eade, and Chairman Fitzgerald, answered "yes". Motion carried.

Chairman Fitzgerald moved onto the next item on the agenda.

- **Zoning Fees** – Discussion/recommendations.

Mr. Schaedlich started with the residential signs. He indicated an additional memo was given to the Commission at the beginning of the meeting. The memorandum outlines the pricing increase and the estimated revenues that would be generated from the increase. Chairman Fitzgerald stated that this is just a fee increase for the signage indicated in the memorandum. Mr. Schaedlich reviewed with the Commission the current fee structure and the proposed increase. Chairman Fitzgerald asked what the cost is to process the sign applications. The response was much more than the current fee.

There was discussion about the proposed fee and what the actual cost is to process the application. Chairman Fitzgerald indicated that he felt the fee should cover the cost to process the application and asked why the fee is not structured that way. Ms. McMahon indicated the fee would most likely be doubled the suggested fifty-dollars which would be a very big increase. Chairman Fitzgerald stated the City should cover its costs to process the applications. The Administration commented that they

could recalculate the fees to reflect the actual processing fee. The Commission agreed that this should be done to understand what the actual cost would be.

Mr. Barry Usko, 763 North Avenue, stated that a time study would be something the City could do to find out actual costs for processing.

Mr. Tony Torre, 158 Sanford Street, indicated that in this tough economy he is against fee increases for anything.

The Commission reiterated that they would like more information on the fee increases. Ms. McMahon suggested that the two items on the Agenda dealing with fee increase be tabled so the Administration can complete a time study and further research the issue.

There being no further discussion, Chairman Fitzgerald asked for a motion. Motion by Mr. Temming seconded by Mr. Eade, to table increasing the fees for Section 1135.02 relating to signs; and Section 1149.01 relating to fees; and requested the Administration complete a time study on what is involved in processing each so the fees can cover the cost of processing. On roll call, Mr. Komjati, Mr. Eade, Mr. Temming, and Chairman Fitzgerald, answered "yes". Motion carried.

Chairman Fitzgerald moved onto the next item on the Agenda.

- **Buffering Industrial uses from Residential uses**

Mr. Schaedlich stated the Commission was provided a memorandum that included information on several communities in the area and what they have in place for their buffering. Some of the communities are newer and have larger land area to work with; and some are older with smaller land areas. Mr. Schaedlich explained the City's Code and the impact that industrial uses have on adjacent residential areas. The setback requirements in those instances can be increased along with additional regulations for parking lot areas. The landscaping requirements can also be increased to help with the buffering.

Chairman Fitzgerald asked if this was for only new construction. Mr. Schaedlich stated that it would be for new construction and any industrial use that would change their site. Mr. Komjati asked if 35-feet was the proposal. Mr. Schaedlich replied that is the existing setback. He indicated that he did not give a proposal since he felt this would something the Commission could discuss with the Administration. Other community's were highlighted to show the differences between their requirements and the City's current requirements.

Chairman Fitzgerald asked why the Commission was reviewing this code section; was there any particular reason. Ms. McMahon stated this was recommended by City Council to the Planning Commission to look at increasing the buffer, no recommendation was given by City Council. Chairman Fitzgerald asked if they had given a reason why. Ms. McMahon replied that as they were reviewing the rezoning for the properties on Stage Avenue that had come through Planning Commission, those properties have residential uses fronting Stage Avenue with industrial zoning in the rear of the property. The concern is this residential will be closer to the industrial and what could be located there and what type of protection do those residences have for that being developed.

Chairman Fitzgerald asked if the buffer ever coincides with the lot size; larger lots have a larger buffer requirement and smaller lots would be smaller. Mr. Schaedlich indicated that is not the case, the buffer requirements relate to the use and is a set number or standard.

Mr. Komjati asked if the buffer requirements have been an issue in the past. Ms. McMahon replied that she has never encountered an issue over the last twelve to fifteen years. In the early 1990's an industrial building was constructed next to a house and some issues had been raised then. She commented that the current zoning code has extensive language for landscape buffers of industrial and commercial uses. In addition, that code section places the burden on the commercial and industrial uses and not the residential uses. Ms. McMahon went through the various requirements in detail of the code that were put in place after the incident that occurred in the 1990's. The comment that was made at the council meeting was if industrial users were to locate behind the residents, and created an extensive amount of noise, how this would be handled. Ms. McMahon stated that there is another section of code that deals with parking and location of operations near residences. The idea is to look at all of the code sections that would apply, not just the distance and the setbacks for buildings. The code is restrictive. Ms. McMahon stated that the comment made at the Council meeting was if a machine stamping shop wanted to locate behind the residents how is this dealt with. She stated there is another section of our Code dealing with noise issues.

Chairman Fitzgerald asked what precipitated this review. Ms. McMahon commented that she is not sure; they requested that the Commission review it after their discussion of the item. Mr. Temming

stated that it was not that long ago the buffer section of the Code was reviewed and modified. Mr. Schaedlich responded that modification was for the interstate areas and railroad tracks for new developments.

Mr. Barry Usko, 763 North Avenue, stated that as a homeowner he would like to see at least fifty-feet between any business and a residence for new construction.

There being no further discussion, Chairman Fitzgerald indicated that he was of the opinion to leave the current language alone. He asked for recommendation on this issue. Motion by Mr. Temming, seconded by Mr. Eade, to maintain the current code language for Commercial, Industrial, Multi-Family setbacks in Section 1137.07. On roll call, Mr. Eade, Mr. Temming, Mr. Komjati, and Chairman Fitzgerald, answered "yes". Motion carried.

- **Parking of Commercial Vehicles in Residential Districts**

Ms. McMahon explained that this code section is similar to the previous item in that City Council has asked the Commission to reconsider the language for parking of commercial vehicles in residential districts. In March of this year, the Planning Commission recommended to Council to amend the Ordinance to include a list of vehicle types that would be prohibited in residential districts. In addition, a provision was placed in the code that any vehicle over a particular size would be prohibited. This ordinance was enforced on a resident who had a tow truck, one of the prohibited listed vehicles, and had to remove the vehicle even though it is smaller than the size prohibited. An appeal was made to City Council to eliminate all the naming of the vehicles and just regulate by size of the vehicle. After discussion, the following options were proposed to City Council: 1. Change the title: (d) Oversized **and Commercial** Vehicles; 2. Eliminate the listed vehicles: (d) Oversized **and Commercial** Vehicles. No person shall park or store a ~~commercial tractor, school bus, bus, semitrailer, pole trailer, dump vehicle, tow truck, flat bed or~~ motor vehicle which is more than seven and one-half feet in width, eight feet in height or twenty-two feet in length within the residential district of the City, either on public or private property, including public street or highway, except to make deliveries, pickups or for the loading or unloading of persons, unless such ~~commercial tractor, school bus, bus, semitrailer, pole trailer, dump vehicle, tow truck, flat bed or~~ motor vehicle which is more than seven and one-half feet in width, eight feet in height or twenty-two feet in length is parked or stored in a completely enclosed structure; 3. Delete the listed vehicles and add a provision for other commercial vehicles if approved by the Planning Commission: (d) Oversized **and Commercial** Vehicles. No person shall park or store a ~~commercial tractor, school bus, bus, semitrailer, pole trailer, dump vehicle, tow truck, flat bed or~~ motor vehicle which is more than seven and one-half feet in width, eight feet in height or twenty-two feet in length within the residential district of the City, either on public or private property, including public street or highway, except to make deliveries, pickups or for the loading or unloading of persons, unless such ~~commercial tractor, school bus, bus, semitrailer, pole trailer, dump vehicle, tow truck, flat bed or~~ motor vehicle which is more than seven and one-half feet in width, eight feet in height or twenty-two feet in length is parked or stored in a completely enclosed structure, **unless approved by the Planning Commission**; 4. There also could be a partial list of vehicles that the Council and Commission may wish to list as prohibited and then permit Planning Commission approval for others. For example: (d) Oversized **and Commercial** Vehicles. No person shall park or store a commercial tractor, school bus, bus, semitrailer, ~~pole trailer, dump vehicle, tow truck, flat bed~~ or motor vehicle which is more than seven and one-half feet in width, eight feet in height or twenty-two feet in length within the residential district of the City, either on public or private property, including public street or highway, except to make deliveries, pickups or for the loading or unloading of persons, unless such commercial tractor, school bus, bus, semitrailer, ~~pole trailer, dump vehicle, tow truck, flat bed~~ or motor vehicle which is more than seven and one-half feet in width, eight feet in height or twenty-two feet in length is parked or stored in a completely enclosed structure, **unless approved by the Planning Commission**.

There was discussion regarding the various options presented along with different scenarios that could occur in each of the examples. Each of the options has pros and cons to them. City Council asked that the Planning Commission decide which of the options was the best. Ms. McMahon stated that the Commission could either make a recommendation to keep the language the same or to change it to one of the options given or change it to something entirely different. Mr. Temming indicated that he felt it was best to leave the names of the vehicles in the language since someone would have to measure the vehicle to determine if it was in compliance. Ms. McMahon indicated that the Police Chief preferred that the list be included since both the Police and Code Enforcement are in charge of enforcing this section of code. The police officers are not going to get out and measure a vehicle to be sure it is allowed. Mr. Komjati indicated that he would not believe the taxpayers would like this to be a practice for the officers either.

Mr. Tony Torre, 158 Sanford Street, stated that along with the size of the truck the City should make sure a business is not being operated out of a home. It was explained that the City does allow for home occupations.

The Commission discussed the various options. Mr. Temming stated that he does not agree with option number three with the elimination of the names and Planning Commission review for approval. Ms. McMahon asked if they would at least consider the one modification that is changing the title to add Commercial. This would aid in code searches allowing someone to find this section easily by putting in commercial vehicle.

There being no further discussion, Chairman Fitzgerald asked for a motion. Motion by Mr. Komjati, seconded by Mr. Temming, to modify Section 1137.12 of the Zoning Code relating to Oversized Vehicles in the following manner: Change the title to read (d) Oversized **and Commercial** Vehicles. On roll call, Mr. Temming, Mr. Komjati, Mr. Eade, and Chairman Fitzgerald, answered "yes". Motion carried.

OTHER MATTERS THAT MAY PROPERLY COME BEFORE THE PLANNING COMMISSION

Mr. Schaedlich updated the Commission on the Conditional Uses that were approved last month. Mr. Parker on Elm Street was unable to locate the soil testing documentation done previously. He is going ahead with having the site tested. Mr. Hall has requested the City look at the on-street parking availability and is in discussions with his neighbors in trying to come up with an agreement. Ms. McMahon indicated the City did modify the street parking for that area. There were eight additional spaces added for that area.

The Commission was encouraged to review the upcoming Zoning Workshop information and decide if they would like to attend. The Workshop will be held Friday, November 18.

ADJOURNMENT

Chairman Fitzgerald asked if there were any other items to be discussed. There being no other items to come before the Planning Commission the meeting was adjourned.

Lynn M. White, Secretary

Thomas Fitzgerald, Chairman