

PLANNING COMMISSION MEETING

October 11, 2012

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, and Vice Chairperson Christine Shoop. Absent was Chairman Thomas Fitzgerald. 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:

Vice Chairperson Shoop asked for additions or corrections for the Planning Commission Meeting of September 13, 2012. There being no comments, Vice Chairperson Shoop asked for a motion. Motion by Ms. Fleck, seconded by Mr. Komjati to approve the minutes for the Planning Commission Meeting of September 13, 2012 as written. On roll call, Ms. Fleck, Mr. Komjati, Mr. Wainwright, and Vice Chairperson Shoop answered "aye". Motion carried.

NEW BUSINESS:

There was no New Business to come before the Commission.

ADMINISTRATIVE REPORT:

Vice Chairperson Shoop asked the secretary to read the first item under the Administrative Report.

Temporary Structure and Uses: Lake Erie College was granted the placement of a temporary modular unit at Recreation Park on June 12, 2008 with an extension granted in December 2008; November 2009; November 2010; and November 2011 with the stipulation the modular unit be removed by December 1, 2012. Lake Erie College is requesting a one-year extension of their permit for the modular unit.

Vice Chairperson Shoop asked if there was anyone present to speak on behalf of this request. There being none, she asked if the Commission would need to approve this extension. Mr. Schaedlich explained that this request would need to be approved by the Commission. He stated in his staff report that a recent visual inspection of the exterior of the modular unit revealed that the overall structure is generally in good shape except for a couple of minor issues. Those issues include the fact that a couple of small sections of the skirting around the base of the modular unit are missing. Those sections should be replaced. In addition, on the east-facing wall of the structure, there are two holes in the siding that should be patched. These holes should be patched to prevent the potential of interior water damage. Mr. Schaedlich is recommending approval with these stipulations.

Vice Chairperson Shoop asked for a motion on the Temporary Structure request for Lake Erie College. Motion by Mr. Komjati, seconded by Ms. Fleck, to approve the request to utilize the modular unit (temporary structure) with the stipulations that it be maintained in good repair in 2013 and be removed by December 1, 2013. The issues concerning the skirting and holes shall be addressed and repaired within thirty (30) days of approval of this request by the Planning Commission. On roll call, Mr. Komjati, Mr. Wainwright, Ms. Fleck, and Vice Chairperson Shoop, answered "yes". Motion carried.

Vice Chairperson Shoop asked the secretary to read the next item under the Administrative Report.

Temporary Structure and Uses: Ohio Energy Inc. was granted temporary use of 305 West Prospect Street for an indoor sports facility on November 10, 2011 for one-year. Ohio Energy Inc. has re-applied for a temporary use permit for this location based on Section 1141.07 (c) of the zoning code.

Vice Chairperson Shoop asked if there was anyone present to speak on this request. Mr. Dan Fisher, 66 Lusard Street, stated that he would speak on behalf of this request. He stated they would like an additional year for this facility. They are using it for girls' softball training. Mr. Komjati asked how the business was going. Mr. Fisher replied the business is doing well. They have six teams that use the facility. During the winter, they put on hitting and pitching clinics. Mr. Fisher stated that they have schools that use the facility for their training.

Mr. Komjati stated that one of the concerns listed in the staff report involved the parking area and the need for striping. Mr. Fisher replied the first four spaces are striped and they have the concrete bumpers. If additional spaces are required, they will make sure they are put in. Mr. Komjati commented the report indicates the parking area needs to be paved. Mr. Fisher responded the parking lot is asphalted.

Mr. Schaedlich inquired about the cars utilizing the lot, is there sufficient area to handle the cars. Mr. Fisher stated they get about eight to ten cars at the most in one period. Only one team occupies the facility and they are there for a one and a half hour time slot. There was discussion on the overall parking lot and the fact there was enough space to handle 30+ spaces.

Vice Chairperson Shoop asked if the applicant had been made aware of the recommendations listed in the City's staff report. Mr. Fisher stated he has a copy of the report. He commented the he would like to know whom they offended. Mr. Fisher stated that he has talked to the different business in the area and they have commented they do not even know they are there. He expressed that he has letters from nine of the neighboring businesses who are in support of the operation. Mr. Fisher submitted the letters for the record.

Mr. Schaedlich explained the situation that this request was submitted to the Commission last year as a temporary use. One of the concerns is that a building of that size is tied up in a year-long lease the marketing ability becomes difficult. The City would strongly prefer to have a manufacturing company in the facility that would generate income and property taxes to the City. In fact, a company expressed interest in the 305 West Prospect building during the past year, but was stymied because Ohio Energy had a full-year lease on the facility. Painesville City has limited industrial property in comparison to neighboring communities and values it at a premium. Business and Industrial concerns enhance the City's tax base. The activity that is currently there may be worthwhile, however, the preference for the City's limited industrial locations is to have a viable industrial use. Mr. Schaedlich stated that the applicant should look for a permanent space; this was intended only for a temporary use.

Mr. Fisher responded that he understands that. He presented photographs of the space indicating this type of space is vital because of the high ceilings and the large open space. The area has been turfed and they have added netting into the space. Mr. Komjati asked who paid for the interior furnishings. Mr. Fisher replied that was all donated, it came from a facility that was located in Mentor. They are a nonprofit organization.

Vice Chairman Shoop inquired about the Staff Report. The items listed at the end normally contain stipulations. She indicated these are not typical stipulations and asked for clarification. Mr. Schaedlich commented that the items listed were for the Commission to review with the applicant.

Mr. Fisher explained their hours of operation are from 6:00 to 9:00 PM, Monday through Friday; weekends during the day. They do not see any truck traffic in the area when they are at the facility. They are not aware of any issues with the neighboring property owners and the truck traffic concerns.

Mr. Komjati asked about the availability of additional space within the city for the applicant to look to occupy. Ms. Cathy Bierterman responded that the City is extremely limited on industrial space. The only space available currently is between 1,500 and 2,000 square feet; much smaller than their current location. She stated that it also would not be suited for the use in terms of height of the ceilings, etc. Ms. Bierterman commented that this type of use is new to the city and she does not know of any available spaces for this use to be relocated.

Mr. Fisher stated that the middle unit of the building is vacant. The owner of the facility has asked them if they would like the other units since they are currently not being used. Ms. Bierterman indicated the rear portion of the building is being occupied by Ashlawn Energy and the other unit the owner is using for storage. Mr. Fisher responded that he spoke with the owner yesterday and he expressed an interest in having them take the unit he is using. Mr. Fisher explained they chose Painesville since it is a central location for the users.

Vice Chairman Shoop inquired about the suggestion of changing the lease of the facility to a month-to-month option rather than a one-year lease. She asked the applicant if he and the owner were willing to do this. Mr. Fisher stated that he did not think that would be an option since the owner really likes having them there.

Assistant Law Director, Jim Lyons, asked what type of lease is currently in place. Mr. Fisher replied they have a one-year lease with an automatic renewal at the end of the year. Mr. Lyons stated the

Planning Commission's responsibility is not to dictate lease options, but to determine whether the temporary use should be given for another year. He stated that the applicant does not have the right to be in this facility. The use was given for a one-year term and they are now asking for an additional year. The Commission needs to grant or deny the request. He stated that if the Commission agrees with suggestion number four (The property-owner offer Ohio Energy a month-to-month lease in the chance that a business/industrially-based company wants to move into the 305 West Prospect Street building) then the request should not be granted) then the request should be denied. If the use continues from year to year, it does not meet the "temporary" standard.

Mr. Komjati commented that if the use is denied then the owner has no tenant. Mr. Lyons stated that temporary is only temporary for a limited amount of time. This almost becomes like a zoning change if it is allowed to continue more than two-years. Some may even argue that after one-year it is no longer a temporary use. Mr. Fisher questioned the use just granted for Lake Erie College. Mr. Schaedlich responded that the College has a temporary structure placed on the field for a use that is allowed in that zoning district. The difference is the use of Ohio Energy does not fit the zoning category in which it is located.

There was discussion regarding other options that Mr. Fisher could look into. One would be to purchase a piece of property and build a structure to house the use in the appropriate zoning district. Another would be to request that this classification be added to the zoning district. There was lengthy discussion regarding what the recommendation would be for this use to be added to the zoning code. It was clarified that the Planning Commission would be the recommending body to forward this for City Council's approval. This would be done by having the City Planner/Community Development Director providing this to the Commission after receiving such request from the applicant. There were various comments and questions from the Commission regarding the type of stipulations that could be placed on this request.

Mr. Lyons asked if Ohio Energy had any employees on a payroll. Mr. Fisher stated they do not. The organization is run completely by volunteers. The coaches are not paid. There are fees that are charged which cover the costs of uniforms and travel to games and for the rental of the facility. Mr. Lyons indicated that means there are no city income taxes paid by this company. Mr. Fisher replied that is correct; obviously, the property owner pays real-estate taxes.

There being no other discussion on this matter, Vice Chairperson Shoop asked if there was a motion. Motion by Mr. Komjati, seconded by Ms. Fleck, to approve of the temporary use of 305 West Prospect Street for one-year. On roll call, Mr. Wainwright, Ms. Fleck, Mr. Komjati, and Vice Chairperson Shoop, answered "yes". Motion carried.

Vice Chairperson Shoop asked the secretary to read the next item under the Administrative Report.

Review of Conditional Use Permit (Refusal No. 2111) issued to Lakeview Bluffs LLC and Tierra Solutions, Inc. for soil removal at Elm Street (Parcel Numbers 15-A-019-0-00-013-0; 35-A-002-0-00-002-0; and 35-A-002-0-00-003-0): Permit granted February 21, 2007; reviewed December 13, 2007; extension granted December 2008, November 2009 and December 2010; extension granted December 2011 with the stipulations that were agreed upon for the original permit with an expiration date of December 30, 2012.

Mr. Todd Davis of Tierra Solutions, Inc. introduced himself to the Commission. Mr. Davis indicated that in accordance with their temporary permit he would like to give a quick overview and status of the project. He stated that over the past year they have resolved all environmental issues in certain areas of the 100+-acre site. He commented there is one small issue near the site they are trying to resolve with the EPA on property they do not own. The lakefront improvements should be completed in two-weeks. Mr. Davis stated that all the work done in the chromium landfill area is completed and the cap has been significantly improved. He stated they are still waiting on EPA studies on a few of the areas. They do not anticipate any issues on property within the City of Painesville. Mr. Davis stated that the EPA is looking closely at the area closest to the river to be sure the impacts are addressed. This area is in Painesville Township.

Mr. Komjati asked about the property next to the site that they do not own. He wondered how that worked and why it is Tierra Solutions issue. Mr. Davis explained that they had signed an agreement with the EPA to complete an investigation of the entire site regardless of ownership. The assessment activities are being done by Tierra Solution according to the EPA orders. Once the assessments are completed then the appropriate property owners will be addressing any issues that are brought up from the EPA. Historically these areas were already cleaned. It is just a matter of having the entire area assessed per EPA orders.

Ms. Fleck asked what is the expected longevity and integrity of the chromium cap. Mr. Davis stated the longevity is forever. The cap consists of a minimum of two-foot dense clean clay material on top of the chromium floor, which was spread out over the site. The integrity of the cap will be checked every year to be sure it is in compliance.

Mr. Davis state that in conclusion, they are fixing the environmental issues and making sure all the requirements are being met. The biggest challenge is getting through the appropriate paperwork for remediation and having the EPA sign off on the issues as they are resolved. They are hopeful the market will turn around at the time this project is completed.

Mr. Davis asked if there were any questions. There being none, he stated they are requesting an additional year for the soil removal permit. He explained the trucks would not access the city streets, all the soil removal will be done on-site. In addition, he stated last year they did not receive a single complaint in regards to the soil removal. There were questions regarding where the soil was being removed. Mr. Davis responded that the area where the soil is being removed would become a lake so there is a plan involved as to how they are removing the soil and what will be done at the site once it is removed.

There being no further discussion, Vice Chairperson Shoop asked if there was a motion. Motion by Mr. Komjati, seconded by Ms. Fleck to approve the request for an additional year, to December 30, 2013, with the stipulation that Condition #18 be invoked so that a progress report be given to the Planning Commission by no later than the December Planning Commission meeting in 2013. On roll call, Ms. Fleck, Mr. Komjati, Mr. Wainwright, and Vice Chairperson Shoop answered "yes". Motion carried.

OTHER MATTERS THAT MAY PROPERLY COME BEFORE THE PLANNING COMMISSION:

Mr. Schaedlich informed the Commission of the upcoming APA Planning and Zoning Workshop on November 16. He stated that interested Commission Members are urged to contact the secretary with their intent to attend.

Ms. McMahon indicated she is retiring as of November 1 and this was her last Planning Commission Meeting. She thanked the Planning Commission Members for her years of being involved at the Commission level and working on so many projects together.

Mr. Komjati thanked Ms. McMahon for all of her guidance and direction for the Commission.

ADJOURNMENT:

There being no further business, Vice Chairperson Shoop adjourned the meeting.

Lynn M. White, Secretary

Christine Shoop, Vice Chairperson