

City of Bay Village
PLANNING, ZONING, PUBLIC BUILDINGS AND GROUNDS COMMITTEE
March 1, 2021
6:00 p.m.

Members Present: Councilwoman Sara Byrnes Maier, Chairman
Councilwoman Lydia DeGeorge
Councilman Peter J. Winzig.

Also Present: Law Director Mark Barbour
President of Council Dwight Clark
Council Thomas Kelly
Director of Public Service and Properties Liskovec (Zoom)
Building Director Tuck-Macalla (Zoom).

Audience by Zoom: Claire Banasiak, benjyman, Larry Ludwig, Jim Blocksidge, Daisy, Bill.

Agenda this evening includes the Red Oak Subdivision No. 2, and the Tree Ordinance. Ms. Maier noted that changes to the ordinance have been discussed for the past few meetings, and tonight there will be review of the draft of the ordinance beginning with Section 547.16.

Red Oak Subdivision No. 2

Ms. Maier advised that the Red Oak Subdivision No. 2 went through the Planning Commission, and will have to go back to the Planning Commission for a final step. The request is to take an existing parcel and split it into four segments that have three home sites on them, one requiring a flood plain process. Law Director Barbour will talk about the overall process for finalizing the request for the subdivision.

Law Director Barbour stated that one step with the Planning Commission remains under Chapter 1109 of the Codified Ordinances of the City of Bay Village. Section 1109.03 (d), requires a formal review of the final tracing, or the Mylar drawing, by the Planning Commission. That will complete the Planning Commission's review. The primary function of coming to Council is in Chapter 1109.03 (d) (5), where a proposed subdivision approved by the Planning Commission is first referred to this Planning and Zoning Committee for study and recommendation of approval, disapproval, or approval with modification, and would require an ordinance by Council. Several components of the review are laid out in Section 1109.03 (a) (b) (c) (d) (e) and (f), primarily that the streets are in accordance with the thoroughfare plan or that there are some located to serve the subdivision or other areas that connect or will connect, and the proposed improvements meet the standard for construction set by the City which would be reviewed by our engineer and Service Director. Any streets, right-of-ways, easements and sites designated for public use and properly offered for dedication will need a title guarantee. That will be presented by the subdivider. For improvements that have already been installed before a bond or certified check has been posted, the builder would have to, in this case, post a bond in an amount that is in the process of being determined by our engineer. Any deed restrictions on the

property are in recorded form. (Mr. Barbour stated that he does not believe there will be any deed restrictions.) The catch-all is that the approval of the subdivision shall be in the best interest of the city, and once approved will be recorded.

Mr. Barbour further advised that the Planning and Zoning Committee will take the lead on this, conduct the review and make a recommendation which will have to go to the entire body of Council for action by resolution or ordinance, of either approval or disapproval. Any modification that this committee decides need to be made would be done through the committee's recommendation and once it is done, there would be approval or disapproval.

Ms. Maier stated that the time line of going back to the Planning Commission for the final tracings would be some time in the next several weeks, and then back to the Planning and Zoning Committee, provided that they have satisfied the bond requirement and the title guarantee.

Mr. Barbour stated that the time line and sequence of events narrated by Ms. Maier is correct.

Ms. DeGeorge asked if there will be a deadline or time limit once it comes back to the Planning and Zoning Committee.

Mr. Barbour replied that the ordinance does not specify that, but it would have to be a reasonable amount of time.

Ms. Maier asked if the committee wanted to discuss the request tonight or table it for future discussion. Mr. Barbour stated that if the committee is so inclined there can be discussion this evening, anticipating that there will not be any changes from the Planning Commission, or if there would be changes they would be extremely minor. He noted that the Planning Commission spent a considerable amount of time discussing this proposal. Ms. Maier added that Ms. DeGeorge was in attendance at those meetings and heard the discussion. It was not an easy matter before the Planning Commission, but the Planning Commission felt it was important with the general layout of the street and the surrounding homes in terms of the lot sizes (not necessarily the home sizes), and working off of our existing zoning code. One of the things early on with the turn-around, whether that be a temporary circumstance or a permanent circumstance, the Planning Commission felt that the temporary turn-around situation that was provided for with the subdivision meets the requirements of the City.

Ms. Maier called for questions or comments.

Ms. DeGeorge stated that a comment that will be heard quite often throughout this process is that she is certain that the sections (a) to (e) will be done properly, but section (f) tasks Council that the approval of this subdivision shall be in the best interest of the City. Ms. DeGeorge stated that she has a lot of notes from all the meetings she attended and she did not hear anyone speak to the fact that this subdivision would be in the best interest of the City. It is one property owner's right versus an entire neighborhood's right and the ripple effects that it could have throughout pockets of the City. This is the one thing that has been heard from multiple meetings and two public hearings and nobody has yet to tell her why this is in the best interest of the City. Ms. DeGeorge stated that this is her approach to the recommendation this committee will end up

making to Council.

Mr. Winzig stated that the only question he had is in issue (b) which states that all proposed improvements meet the standards for construction set by the City. Is there a process where someone signs off on that before it comes to Council, or is it just assumed?

Ms. Barbour stated that Chagrin Valley Engineering would sign the drawing, as well as the Service Director, after being sure it complies with engineering standards or building standards and the Service Director makes sure our utilities comply, and the sanitary and storm sewers are all appropriate.

Building Director Tuck-Macalla advised that a lot of what went on with the back and forth with the plans at the Planning Commission meetings for the purposes of approving this lot split were really unnecessary. The whole back and forth about whether or not it was in a flood zone took a lot of time to go over and didn't really have anything to do with whether or not the lot could be split. At this point any other concerns, such as the flood plain issues, are taken up in the next step when they would go to build on the lot. There is also an issue about the riparian setback issue on the same lot that will be taken up when they build on the lot. At this point the question of whether they should split those lots – that one lot that is next to the creek could just sit there indefinitely and not be built on. Mr. Tuck-Macalla stated that he has no other concerns.

Ms. Maier stated that the committee will follow the process of moving the issue to the Planning Commission who will send it back to the Planning and Zoning Committee for their recommendation to the Council of the Whole.

Tree Ordinance

Ms. Maier asked Director of Public Service Liskovec to provide updates on the work that the City is doing in terms of the public trees with the inventory that the City has done using the Cuyahoga County tree grant last year, and the result of that survey, and overall plantings for tree lawn trees.

Director of Public Service and Properties Liskovec stated that the City of Bay Village was awarded a grant in 2019 from Cuyahoga County to do some planning for our trees. At that point the City went down a path to process a complete inventory which encompassed not only existing trees that are publicly owned, but locations for future trees. What was created and developed out of that inventory was a complete evaluation of our existing street/public tree inventory. This helped put together a good five-year plan for maintenance, preservation, and management of the current stock. This includes determining the necessity of removals, risk mitigation, maintenance pruning and developmental pruning. This year the staff is working on the objectives of the program. Approximately 3,200 trees were inventoried that are publicly owned.

On the planting side, Bartlett Tree Co. experts were assigned the inventory work. All the parameters, most based out of our ordinances as far as suitable tree locations and industry standards were consulted. Locations and depths of tree laws were taken into consideration, as well as the type of tree that could be successfully sustained. Bartlett took the standards and came

back with 2,500 viable planting sites. That realistically sets up the Service Department to look at those sites. Mr. Liskovec was able to take the data created and put it on a GIS layer to visually see how the sites lay out to start planning for how the street trees will be planted. Much of this was taken into consideration when submitting the recent application to Cuyahoga County for the current year funding grant for planting projects, which will be just over 200 trees, strategically throughout the City after leveraging the data provided in the Bartlett inventory in addition to data provided by the Cuyahoga County Planning also provided as far as over-all canopy needs and deficiencies. This will provide a pathway through the next five years.

Mr. Liskovec stated that the current grant application is for \$50,000 which exceeds the City's current planting budget. We are seeing a loss of trees more rapidly on the private side than on the public side. We are losing large, mature trees that are reaching their maturity, whether it be an Oak, Maple, or something of a large shade tree nature. We do become very limited to face the tree loss, because only so many trees can be planted in a given space on a tree lawn.

Areas in the city are being affected on the private side, whether due to Oak Wilt, trees maturing out, the Ash Bore disease that came through years ago, as well as new insects that cause further damage. Updates for the City website are being readied to provide educational information for residents. Some of the information is currently on the website, and Mr. Liskovec, Project Manager Kerber, and the Tree Commission will put as much information on the website as they can to educate and encourage the public of the benefits and best industry practices for the selection and planting of trees. Ultimately, if there are any questions on the residents' side the City will always defer to a certified arborist to look at the site and determine what is appropriate and best for the site.

Ms. Maier thanked Mr. Liskovec for his comments, noting that it is helpful to know what the City is going to be working on and the website coordination with the Tree Commission. The basic information on how to trim trees, what seasons to do the tree trimming, as well as the importance of having qualified tree company contractors is important information for residents.

Ms. Maier stated that at the last meeting the committee went about halfway through the draft of the tree ordinance that the Tree Commission had put together. We will continue to go through the tree ordinance for comments and prepare a revised draft to look at again.

Section 547.16 – COMMERCIAL PROPERTY, UNDEVELOPED RESIDENTIAL PROPERTY AND PROPERTIES FORMED BY DIVISION, SUB-DIVISION OR DEMOLITION OF EXISTING DWELLING.

At the last meeting, the committee got through preconstruction activities with a comment to add some language to the first section with general regulations about having approval before obtaining a building permit or lot split. Ms. Maier stated that it is very clear that a tree plan must be completed.

Ms. Maier stated that the committee also got through the tree removal permit section and was about to launch into Commercial Properties.

Mr. Barbour stated that on the Tree Removal Permit, there was not discussion on who would issue the permit, which entity within the City would be responsible for the permitting process. It was left open between Service and Building to see where it would fall.

Mr. Winzig noted that the draft of the ordinance states that the permit would be issued by the Service Director or designee.

Mr. Barbour stated that what is needed for discussion is how it is going to work as a practical matter. Everyone comes to City Hall for a building permit and they do not really go to the Service Garage for a permit process. The Service Garage does handle money from residents for some things but it really becomes an operational matter as to who is better set up to handle the permit process. What should that look like on a day-to-day basis?

Ms. DeGeorge asked if that would be an administrative decision and we appropriate that language based on the decision of the administration.

Mr. Barbour stated that it would be the collective decision of all the people that are involved in forming the change. There should be discussion because the ordinance needs to say directly who will issue the permit.

Ms. DeGeorge stated that when this conversation started four years ago there was some discussion of taxing a particular department and possibly even hiring someone else in terms of the work load and needing an extra body.

Mr. Barbour stated that he does not think the Planning and Zoning Committee would necessarily decide it is going to be a particular person. This is the opportunity for the Service Director, Building Director or the Mayor to weigh in. The designated party needs to be specified in the final draft.

Mr. Barbour referred to the following section:

Tree Removal Permit

- (a) Issuance. No person shall remove, injure, destroy, disturb, or undertake any procedure which is likely to cause the death or substantial destruction of any protected tree without first procuring a tree removal permit from the city. Tree removal permits authorizing the removal of a protected tree may be issued by the Service Director or designee.
- (b) Receipt of tree removal permit. Upon receipt of a tree removal permit, the permittee:
 - (1) May remove the tree(s) as provided in the permit.
 - (2) Shall remediate the loss of the protected tree(s) according to replacement schedule unless it was exempted according to list of exemptions, in 547.18.
 - (3) Is encouraged to remediate the removal of protected trees within affected property (tree lawn included, 547.07).

- (4) If the required remediation cannot be or is not desired on the affected property a fee can be paid to the Bay Village Tree Fund to plant required trees elsewhere in the city.

Mr. Barbour stated that Sections (b) (2) and (3) seem to be conflicting. Section (4) wording that says a fee can be paid to the Bay Village Tree Fund to plant required trees elsewhere in the city, may need to say specifically where the trees are to be planted, in the event that someone came in and wanted to contest this process and say it is vague and they put it somewhere else. A list of places where they could plant should be included, or language as designated by whoever the designator is.

Mr. Winzig stated that many of the ordinances from other cities reviewed are very specific on this and there is an actual plan in place by the City with identified zones for planting.

Ms. Maier stated that as Mr. Liskovec noted there are areas that have been identified that have deficiencies. Mr. Barbour suggested that the place for planting could be left to the discretion of the Service Director or his designee. He noted that conflicts could arise in the implementation of the ordinance.

Mr. Barbour stated that there should be some testimony about how the numbers for the fees came to be so the City can establish if there is a nexus to our goal and the fees are in proportion to what is being done. For example, if five trees are cut down this would result in a \$600 to \$700 bill pretty easily, so probably we need to establish where these fees came from so it is not indicated that they are just arbitrary; there is a basis for determining the fees. The City of Shaker Heights ordinance just has two standards. If it is a smaller tree that is cut down then a tree is planted that is one size, and if it is a larger tree that is cut down, then you replace with similar caliper. If you remove a tree with two to six inch caliper then you plant a two inch caliper. If you remove a tree with a six inch caliper then you have to plant a four inch caliper tree. If there is a scale, it should show where it came from. Mr. Barbour stated further that he does not know that commercial can be different than residential for the dollar amounts,

Ms. Maier stated that it is asking for a minimum level. The fee for cutting down an 8 inch tree should be \$160.00 rather than \$175 if using the minimum level amount. Mr. Barbour stated that when there is a sliding scale there should probably be a much lower minimum, or do away with the minimum. He noted that ten, 8 inch trees would be a fee of \$1,600.

Ms. Maier stated that to the point the Tree Commission made, there is a value to trees and it is much higher. Even the cost of a replacement tree, the ones that the City has applied for in the County grant are \$200 each for 2-inch caliber trees.

Mr. Barbour stated that it would be useful to have something inserted into the records that establishes where those figures came from.

Ms. Maier suggested circling back with the Tree Commission for more data points.

Ms. DeGeorge stated that typically when she thinks of getting a permit, such as putting in a hot water tank, someone comes out to check. Would they do the same thing with a tree?

Ms. Maier stated that she doesn't think there is the check back. It is more on the penalty side that there is a check back. She noted that the Tree Commission assumed there would be no charge for the permit.

Mr. Barbour stated that they are going to pay for removal of the tree. It is a substantial amount, depending on the viewpoint.

Ms. Maier stated that it needs to be specified if there is some other fee structure that is not specified in our other ordinances or the schedule of the Building Department or Service Department.

Mr. Winzig stated that some communities require a landscape plan or a tree plan. A formal landscape plan acts the same as a permit. Some communities say that every single tree that is removed in a City is required to have a permit. They don't specify commercial or residential; it is just straight across the board.

Ms. Maier stated that this is getting to the point of a lot of what the Tree Commission was trying to do, to make sure that all contractors are doing the work and that quality contractors that are registered with the City are the ones that would do the work.

Mr. Barbour stated that Section 527.16 would be in conjunction with obtaining the Building Permit. A tree plan would be submitted and as part of that process a permit would have to be maintained to remove trees and when an application is submitted to remove a tree or trees, a plan would be submitted to show the tree or trees to be removed. Someone would have to verify that.

Ms. Maier stated this speaks to Ms. DeGeorge's comments about someone checking to see if the permit was complied with.

Mr. Barbour stated that the trees to be removed should be noted on the plan. Mr. Winzig stated that the replacement plan would also have to be submitted. He noted that many cities have multipliers. If you take out "x" you record and replace with "y."

Mr. Barbour stated that caliper inches are used instead of actual number of trees in the bottom half of Section 16. Some of the building sites are unable to accommodate trees so there would be an opportunity for the Service or Building Department reach an agreement with the property owner for an opportunity for the property owner to plant elsewhere.

Ms. DeGeorge asked about new builds versus additions. Ms. Maier asked Building Director Tuck-Macalla if there is a certain percentage of remodeling or addition that requires a broader review.

Mr. Tuck-Macalla stated that on a new build they do send out the site plan to the engineer so that takes a little bit more time, up to ten days. Other than that, the review process just goes through the Building Department and takes a day or two to go through the set of plans unless other documentation is needed.

Mr. Barbour stated that if trees are not taken down the matter does not come into play. But, if you are doing a 12 foot bump out and removing a 60 foot oak....Ms. Maier stated that a building permit would be required. It would apply then to any sort of addition, small or large.

Mr. Barbour reiterated that it would also apply to a lot split, a sub-division, a building permit, any of those things.

Mr. Winzig stated that there is a paragraph for commercial properties, and then almost the exact same paragraph for undeveloped residential properties. He asked why these two paragraphs are not just combined.

Ms. Maier stated that there is a difference. There are different fees for commercial versus residential.

Mr. Barbour stated that it would be any project for which you need a building permit, or a subdivision, or a lot split, or even a lot consolidation. If any of those processes are involved, you would have to submit the due process to remove the tree. You would have to protect them, but if they can't be protected then you would have to replace them. If you can't replace them then you have to pay money into a fund for the express purpose of planting of trees by the City.

547.17 REMOVAL OF PROTECTED TREES ON RESIDENTIAL PROPERTY, EXCLUDING PROPERTIES FORMED BY DIVISION, SUB-DIVISION OR DEMOLITION OF EXISTING DWELLING.

Mr. Barbour stated that this is the section for a property owner who wants to take down a tree on their property not related to new construction or an addition.

Mr. Barbour stated that this is the kind of thing that gives him pause as a Law Director, related to regulatory takings because it is not tied to obtaining a construction permit or permission for commercial development, or dividing a lot. When you look at the ordinances from other cities you often see carve-outs for residential lots that are already pre-existing, which seems to remove the average homeowner who just wants to remove a tree not tied to a particular construction. It seems to exempt that.

Mr. Winzig stated that he likes the idea of a permit for the work to be done. Everybody gets a permit regardless of commercial or residential. But, to invoke a fee or penalty or fee against residential. It is conceptually everybody loves the idea, but it doesn't seem defensible.

Ms. Maier spoke of the article in Cleveland.com recently partially entitled "People love trees,"

the initiative through the Holden Arboretum is trying to get people to plant on private property, and some of the limitations the government

Ms. DeGeorge stated that it seems we are making it punitive rather than offering an incentive to keep a tree that might be healthy, or to plant new trees. An ordinance must advance municipality interests without violating regulatory taking.

Mr. Barbour agreed.

Ms. Maier stated that there are incentives through the County Tree Planting Reports encouraging more planting and recognizing where that line of what where we are able to do and what we want to do. The objective is to increase and stabilize our tree canopy, so we need to be focused on what is going to achieve that.

Ms. DeGeorge stated that that is the key word, what is the objective? Save the tree canopy but at what cost? Do we put the burden on the people to keep Bay Village a Tree City USA, or do we undertake that? I know we want to separate the process because people are up in arms about residents taking down trees on their own property. As Mr. Liskovec said, a majority of the tree loss seems to be coming from residential properties, but is that something we want all thrown in at once? Do you want to focus on permitting first and in commercial?

Ms. Maier stated that we still need to have permitting for all trees. From that standpoint residential needs to be in there and some of it needs to be to encourage people to replant or give them the option to look into the tree fund. Some of them might not even realize that option and so that is giving some of those altruistic incentives. Hopefully we can get this tree canopy planting grant and continue to get it for the remaining three years of the county funding. Do we start doing Arbor Day activities for people to get their own plantings or partner with these organizations to provide those plant materials?

Mr. Winzig stated that the goal on the residential permitting side is to register that they are undertaking that activity, confirm that there is a professional tree service company, and then give them a packet of information. In our packet that we received over the weekend from the Cuyahoga Soil and Conservation District, it tells on page 3 that the district has five brochures listing;

- Benefits of Trees
- Buying High Quality Trees
- Tree Selection and Placement
- Proper Planting of Trees
- Tree Care and Maintenance

This could be in a packet that we could give the homeowner along with information on our website that Mr. Kelly's group is working on through the Tree Commission. We could reference that the City would provide with the permitting information on proper tree care that follows the guidelines of the City.

Planning and Zoning Committee
March 1, 2021

Ms. Maier stated that we also have educational opportunities through the Soil and Water Conservation District.

Mr. Winzig stated that the Heritage Home Program has sent mailings through the community with their services, and possibly we could parallel that somehow to get the word out to residents.

Ms. Maier stated that another point to make, noting that the spread of disease can affect a whole neighborhood, is that putting that permit process in place with qualified contractors can have benefits of a tree not coming down so that we don't have that additional loss.

There were no comments from the audience.

The revised draft will be prepared for the next Planning and Zoning Committee discussion of the remaining issues.

Ms. Maier thanked everyone for their time this evening. The meeting adjourned at 6:57 p.m.

Sara Byrnes, Maier, Chair

Joan Kemper, Clerk of Council