

City of Bay Village

Council Minutes, Committee Session
Dwight A. Clark, President of Council, presiding
Council Chambers

April 19, 2021
7:00 p.m.

President of Council Clark called the meeting to order at 7:00 p.m.

Present: Clark, DeGeorge, Greco, Kelly, Maier, Tadych, Winzig, Mayor Koomar

Also Present: Law Director Barbour, Finance Director Mahoney, Director of Public Service and Properties Liskovec, City Engineer Bierut, Human Resource Director Demaline, Building Director Tuck-Macalla, Clerk of Council Kemper. Via Zoom – Fire Chief Lyons, Recreation Director Enovitch, Project Manager Kerber, Kevin Butler, Esq., Amanda Gordon, Esq.

AUDIENCE

Ed Smith

Via Zoom – Claire Banasiak, Tara Wendell, Denny Wendell, Robert Petkash.

COMMITTEE OF THE WHOLE

Shoreline Special Improvement District – Mr. Kevin Butler, Esq., Ms. Amanda Gordon, Esq.
McDonald Hopkins Law Firm

President of Council Clark welcomed Mr. Kevin Butler and Ms. Amanda Gordon from the McDonald Hopkins Law Firm, present this evening to discuss a Shoreline Special Improvement District (SSID) for the City of Bay Village. Mr. Clark welcomed resident Ed Smith as well, one of the residents who is behind the SSID initiative.

Mr. Butler thanked Mr. Clark for the opportunity to speak with Council this evening, and introduced his partner at the law firm, Ms. Amanda Gordon, Esq. He advised that in their public law practice at McDonald Hopkins, Ms. Gordon has led the charge thus far in Ohio with respect to the Shoreline Special Improvement Districts. In the Lake County communities, Ms. Gordon has actually formed the first SSID District in the state, which is a combination of thirteen different communities in Lake County along the Lake Erie shoreline. It is hoped that Bay Village will follow very shortly those efforts in Lake County.

Mr. Butler stated that Bay Village has been ably served by resident Ed Smith. He has led the charge in his neighborhood for the creation of a Bay Village Special Improvement District. Now that Mr. Butler and Ms. Gordon have been engaged by the city, their efforts would be to work with Mr. Smith and his group, and any other owners who are ready in the City to identify projects in the near term, prepare the petition paperwork and the legislation, and provide those documents to Council for the first legislative act to create of one of these districts.

The legislation essentially approves of an initial plan, but not any special assessments at that point. The creation of a non-profit that is organized under state law to oversee the operations of the district is approved, and someone from the City government is appointed to serve on the board of that non-profit. Law Director Barbour has already provided some guidance to Council on the process. Mr. Butler and Ms. Gordon will not expect to be back before Council for some time, but in the meantime will work very closely with Mr. Smith and folks at city hall to get the first round of paperwork ready to go for Council's consideration.

Law Director Barbour asked when Mr. Butler anticipates he will be back before Council with the first round of paperwork, assuming everything goes as it should.

Mr. Butler stated that Mr. Smith is well underway with respect to engineering and obtaining quotes for the actual work in the Cliff Drive community.

Ms. Gordon stated that if the community Mr. Smith represents truly knows that they want to be part of the SSID, they could be proceeding on that relatively soon. Ms. Gordon stated that she would like to see the project defined a little bit more so they get a good understanding of the ballpark of the costs. The next sixty days may be a little aggressive, depending on where they are with their plans, which do not have to be done before the SSID process gets started. The property owners will really want to know what kind of costs they are dealing with before they get started.

Mr. Butler stated that their anticipation is that a city wide SSID would be formed, encompassing any property owners along the lakeshore who wish to join the district and who might be able to achieve some economies of scale by teaming up with their neighbors on engineering and some of the project costs. The more they have to wait for property owners to come along for the first round of financing the longer the process may be. There may be a limited number of property owners participating at first. The elegance of the SSID is that they can add property owners over time. If not ready yet, but wanting to do a shoreline erosion project at some point in time, the property owner can join later.

Law Director Barbour noted that he has advised Council that the properties in a SSID do not have to be contiguous. They can go from mortar to mortar and property owners can be added once the SSID is established and they are ready with their project.

Mr. Butler stated that any assessments are voluntary only. There is no lumping property owners into a SSID who do not want to be there. Anyone who participates in a SSID has to be there voluntarily, which means there are plenty of properties that are not contiguous. Property owners can be permitted to do their work on their time schedule, but achieve the economies of scale and the special financing that comes with creating those districts.

Mr. Butler stated that the City is going to have to appoint two designees to the SSID Board. Often times that is the Chief Executive Officer of the City, but it can be a designee. The same applies to City Council. The board must be made up of five members including participating property owners.

The City doesn't necessarily have to back the financing. The financing can come from a variety of sources and the issuer can be, for example, a port authority. The City's involvement can be the financing of the project, but that is not necessarily what is going to be expected or required of the City. It is anticipated that those conversations with Amanda Gordon will flush that out. The City, generally speaking, does not have any obligation other than to staff the board with their designees and to pass the legislation necessary to create the district and issue the actual special assessments. From the non-profit standpoint, the non-profit has to be formed, which would be part of the scope of the work of Mr. Butler and Ms. Gordon, and the governing documents of the non-profit would be attached to the petition that is submitted to City Council when they are asked to pass a resolution supporting the creation of a SSID. The residents sign on to the petition and sign on to the plan.

The residents participate in the process by petitioning, by lining up their projects, signing petitions and providing information to compile so that the costs of the projects can be accurately identified.

The government participates by acts of legislation and appointing officials or ex-officio members to the governing board of the non-profit.

Mayor Koomar stated that relative to the engineering costs the non-profit would pay for a potential improvement that would be determined according to the amount per homeowner that is participating and the level of engineering they would need at that point.

Mr. Butler stated that Mr. Smith is far along with the engineering. Mr. Butler called upon Ms. Gordon to talk about the level of engineering necessary to get the resolution before City Council.

Ms. Gordon stated that the engineering for the project doesn't have to be too far along for the legislation to create the SSID. It just has to be sufficient enough so the property owners have an idea of the ballpark of what their projects are going to be. When it comes time for the assessment proceedings that is when it needs to be fairly refined because that is the basis upon which the assessments will be levied. The engineering would need to be at a stage very similar to another project that the City might be undertaking with regard to infrastructure that would be assessed at that point.

Mr. Tadych asked how long the SSID can proceed. Is there a structure of time involved, or can it just go on for eternity? Are there any restraints, twenty years, ten years, five years, that a certain project can go on? Assuming that when the assessments are attached, the project should pretty much be done. The question refers to the time it takes to the point of levying the assessment. Is there a time limit on this?

Ms. Gordon stated that there is no time limit in statute. Mr. Butler added that they have estimated time tables with respect to how long it takes for Council to consider legislation. There are some provisions with respect to that.

Ms. Gordon stated that while they hope not, there could be starts and stops with projects.

Mr. Butler stated that the repayment period is generally going to be dictated by the financial market place, and how far ahead a bank wants the amortization period to be. The statute allows for up to three years but banks are not wanting to fund for up to thirty years. Fifteen to twenty years is typical for repayment. Over time, additional properties can be added to a SSID and those will come with their own, separate amortization periods, their own special assessment periods.

From the start up point when the first resolution is passed to create the SSID, there is no fixed, finite time period between that point and the point of the second piece of legislation, the final assessment legislation. By the time legislation is presented to Council in the first instance – the resolution with a petition – property owners who are ready to go are going to have a real good sense of what their projects are going to cost and when they can start. From that point it will not take much time for the second piece of legislation to finalize the first project.

Mr. Winzig asked, relative to the formation of the SSID, if Council will be required to review operating guidelines or rules within the Board beforehand.

Mr. Butler stated that Council has the right to review anything that is submitted with the initial plan and ask questions as part of their participation as a Board member of the new entity. He noted that they are very confident in the work they are doing, and writing the regulations in a way that provide for elegance and modifications down the line as necessary, based on new projects coming in and old projects leaving overtime.

Ms. Maier asked the process if there is a desire to band together in the future with Cuyahoga County for a SSID.

Mr. Butler stated that there are multiple communities who are getting together right now. Bay Village is not one of those at this point, but it cannot be imagined that the process would be so erroneous that it would not be possible.

Ms. Gordon stated that the documents being used at this time certainly provide for adding territory. It would be necessary to look at which communities to the extent that any of them would have their own SSID. There would be abilities to amend articles within the documents as necessary to form together or to operate under a certain set of articles to bring the other groups in. There is the ground work for that given how many communities may or may not be interested at some point. There are general provisions for adding territory and that would be the best point of departure for adjustments in the future.

Mr. Clark thanked Mr. Butler and Ms. Gordon for presenting to Council this evening, expressing utmost confidence in their leading the charge with the formation of the SSID. Council has signaled their support to be accommodating. Mr. Clark called upon Mr. Smith for comments.

Mr. Smith stated that he can talk to Ms. Gordon on Tuesday, April 20 and tell her what the cost will be for the park project. The park is going to be approximately \$250,000, and each house

about \$80,000, with the whole project about \$1.1 million. Mr. Smith can provide Ms. Gordon with details whenever Ms. Gordon and Mr. Butler are ready.

Mr. Butler stated that he will commit to Mr. Smith to begin working immediately on this and is thankful for the time with City Council this evening and the administration earlier. He welcomes questions from the Council at any time as the work proceeds.

Mr. Clark stated that Council will rely on Mr. Barbour and the Mayor as point persons to keep Council advised as this project moves forward. Mr. Clark thanked Mr. Smith for his involvement and commitment to keep this initiative on track.

Chagrin Valley Engineering – Update on Sanitary Sewer Overflow (SSO) Project.

Engineer Don Bierut addressed Council regarding the Sanitary Sewer Overflow (SSO) Project mandated by the Federal Environment Protection Agency (EPA) for the submission of a plan to eliminate the two SSO's by a date certain. An extension of the deadline for the submission of a plan has been extended from March 17, 2021 to May 21, 2021. Flow monitors and rain gauges have been installed around the City and a model of the storm system has been created. Different variations of storms are run through the model system to be sure the system is acting appropriately. They are working on different solutions to not trigger the Sanitary Sewer Overflow, and have gone through a couple of possible solutions. A solution could be in the area of \$2 million. The EPA will review the plan and within their time frame may or may not agree with the prepared solutions. To reach an agreement, they will work with the City to find a solution that is agreeable and appropriate and then allow five years to implement the plan. Once a plan is in place, the cost of the plan can be determined. It is estimated that this may occur by late summer of this year. Advertisement for bids and funding of the project would take place at that time.

Mr. Clark stated that when the restorative process is complete Bay Village will be one of the few cities in Northeast Ohio that would be fully compliant with the Federal EPA mandate.

Mr. Clark asked the eligibility of using economic stimulus funds for this project. Finance Director Mahoney stated that the American Recovery Plan generally allows for infrastructure, as she understands. Sixty days from the signing of the Act, which was March 11, 2021, the City is supposed to receive half of their allocated funds, and a year later receive the other half. A final list of the amount of money is not yet available.

Ms. DeGeorge asked if the amount of \$2.8 million is to be received. Mrs. Mahoney stated that she does not know because she has not seen a definitive number.

Mayor Koomar stated that through his conversations with Representative Kaptur he feels the \$2.8 million is a good number.

Mr. Winzig asked Mr. Tadych as chairman of the Finance Committee if the idea is to possibly set aside those funds.

Mr. Tadych stated that it could be done that way.

Mayor Koomar stated that from an audit standpoint many times these federal funds have to be segregated.

Mrs. Mahoney noted that a fund will be created for these funds. Interestingly, they are deemed appropriated automatically. They will be included in an appropriation ordinance, however.

Mr. Bierut advised that he does not believe Council needs to take any action for the submission of the plan in mid-May.

ENVIRONMENT, SAFETY AND COMMUNITY SERVICES COMMITTEE-DeGeorge, Tadych, Maier

Ms. DeGeorge had no report this evening.

FINANCE & CLAIMS COMMITTEE-Tadych, Winzig, Kelly, Clark.

Various Purpose Notes, Series 2021 (Second Reading and Consideration for Adoption at Regular Meeting of Council this evening)

Mr. Tadych stated that the various note ordinances are due for second reading at the Regular Meeting of Council this evening, and he has no objection to consideration for adoption at this time. They have been fully discussed.

Mr. Tadych asked the fee that is being paid to bond counsel. Mrs. Mahoney stated that they are paid \$10,000 per year, which also includes filings at the end of the year.

PLANNING, ZONING & PUBLIC GROUNDS & BUILDINGS COMMITTEE-Maier, DeGeorge, Winzig

Ohio Department of Natural Resources (ODNR) Erosion Emergency Assistance Grant Application.

Ms. Maier called upon Project Manager Kathryn Kerber for information concerning the Ohio Department of Natural Resources Erosion Emergency Grant Application, for which a resolution is included on the agenda of the Regular Meeting of Council this evening.

Project Manager Kerber stated that this is an unusual grant. Many grants come around every year or every two years. This particular grant is unique that it came through State Capital to the Ohio Department of Natural Resources for emergency shore stabilization. As part of the project for the grant, engineering can be included. It is thought that this may be a good way to start implementing the Lakefront Master Plan in terms of getting the initial engineering done and some beginning part of the project. The application is seeking \$350,000 to get the process started and there is no City match required.

Mayor Koomar stated that the engineering focus will be on Cahoon Creek at the west end of the property up to the Metroparks.

Ms. Kerber referenced Page 42, Item A in the Lakefront Master Plan as the location, starting with the lakefront section in northwest Cahoon Memorial Park as part of the phased implementation that was recommended by the Smith Group. The idea is to get the engineering to the 35% level in order to start the permitting process. A site survey and metrics study, which is a topography under the water at the lakeshore, are the technical aspects included.

Ms. Maier asked when it will be learned if the grant application is successful. Ms. Kerber stated that she believes the award should be in June, a quick turn-around because the Ohio Department of Natural Resources has to disperse the money that is part of the State Capital Program quickly. The funds must be spent by June 2022.

Mr. Clark asked Ms. Maier if there are any Planning, Zoning, Public Buildings and Grounds Committee meetings scheduled in the near future. Ms. Maier stated that dates for committee meetings will be set to work through the tree ordinance and to include other agenda items as well.

PUBLIC IMPROVEMENTS, STREETS/SEWERS/DRAINAGE COMMITTEE-Kelly, Maier, Greco

Mr. Kelly had no report this evening.

RECREATION & PARKS IMPROVEMENT COMMITTEE-Winzig, Tadych, Greco

Acceptance of State Capital Grant for Bradley Road Park Playground.

Mr. Winzig advised that Project Manager Kerber has offered to provide information concerning the resolution on the Regular Meeting of Council agenda this evening for the acceptance of this State Capital grant.

Mr. Winzig noted that the grant application was submitted pre-COVID, and with the pandemic things became quiet.

Ms. Kerber stated that State Capital funding was requested for part of the Bradley Road Park Playground rehabilitation. COVID came in and state funding was shut down. By the time the funding was made available again, the improvements to the playground had been made by the City. Because other cities also found themselves in that same situation, the Ohio Department of Natural Resources has agreed to look back so the City can be reimbursed for the work that was done before the funding was available. The resolution is to approve going forward with that arrangement.

Mr. Winzig stated that when the grant is applied against the current project the funds spent by the City will be reimbursed. As chair of the Recreation and Parks Committee his thought is to invest

the money and finish Phase IV and complete the project. The goal is to make sure that Council keeps in mind that it is the desire to finish that project within the next year.

Mr. Tadych asked if there will be enough money to replace what has been spent.

The Mayor stated that it represents the playground equipment, and the answer is yes. Phase IV might be soft costs, landscape, and the overhang on the benches. Funds have been approved by Council. Ms. Kerber wants to go back and tie the reimbursement to what we knew would be prudent.

Mr. Winzig stated that he spoke with Director Enovitch and he has pricing and concepts prepared for the completion of the project. The information will be brought to Council when appropriate for a decision.

Mr. Clark stated that for a project that was believed would cost the City a significant amount of money this Capital grant could not come at a better time. He expressed kudos to Project Manager Kerber and the administration for their work. This completes the project and provides money for something that needed to be done. The playground really does look great.

SERVICES, UTILITIES & EQUIPMENT COMMITTEE-Greco, DeGeorge, Kelly

Mr. Greco had no report this evening.

MISCELLANEOUS

Ms. DeGeorge stated that she has been hearing from residents about sewer bills. When calling city hall they were told that they were mailed earlier. The question is if there is any looking forward to anything other than the automatic deduction, such as digital pay.

Mrs. Mahoney stated that she has looked into that but it is not something that will be immediately available. She noted that 752 residents have signed up for automatic deduction, and residents can also go into their own personal bank account and set up payments that way as well as using the option of dropping off their payment. She is not certain of whether she wants to incur the extra charge of maintaining online access and from her understanding from information received from other Finance Directors it is not widely used. Mrs. Mahoney contacted Consumer Affairs and the Post Office twice and they are insisting that a first class stamp provides delivery within four weeks. The current bills were mailed March 29. She noted that a bill sent to Hawaii has already been received and paid.

Mayor Koomar stated that they would work with the mail service to have all the bills dropped off at the Bay Village Post Office for mailing. Those residents who do not pay on time due to not receiving their bill will receive consideration.

Mr. Clark stated that to some extent we should be thinking about how we digitize more for the City versus mailing out 6200 flyers for utility bills or sewer bills. It can't be inexpensive to do.

Mrs. Mahoney stated that the cost is about \$3,000 per quarter. A significant postage discount is received.

Mr. Clark stated that the cost is significant and with the ramping up of technology it is something that deserves further consideration. Mrs. Mahoney stated that the new Finance system is able to send out invoices electronically by email. The issue is that the residents want to see the statements showing past bills, payments and resulting balance.

Ms. DeGeorge stated that she thought the difficulty would arise with the fact that a certain amount of residents want to see their bill on line and others that want it in the mail, resulting in a duplication of cost.

Mr. Clark stated that he would like to reopen the subject of Council vacancies, seeking input from Council. He noted that this could be done through the Charter Review Commission which will be formed in the next year. Mr. Clark expressed concern that if the Council members take it upon themselves to make the decisions it may look like they are doing something that might be self-supporting and self-patronizing.

Mr. Winzig stated that initially it seems like a good idea for it to go through the Charter Review Commission. As we went through the problem with the current election that took place, Council referred to what was in the Charter and it did not provide very specific guidelines. Council deferred to Law Director Barbour who helped to walk through the specifics of voting, and reviewing the applications of those interested in running. At the time, we felt we were following the process as it is written, but to the community it created some confusion. Having the Charter Review look at the provision as well as looking at how other communities approach vacancies would be very positive.

Mr. Tadych stated that there would be time constraints for outside review; Council knows the arguments on all sides.

Mr. Kelly stated that he thought it made sense to do Charter Review because they look at things more broadly, including but not limited to the fact that the current iteration of that provision was done by the Charter Review Commission and was approved by the voters. To the extent that this is the case, it makes sense that some of the objection to the question of self-healing is having the voters have input. Mr. Kelly addressed Mr. Tadych stating that he knows personally when he ran against him the first time he needed to look into things in terms of eligibility. Those rules were changed at that time. There are still questions in terms of limitations and in terms of who is eligible to serve as a member of Council that he would actually hope are looked at again. There were limitations in terms of school employees, county employees, and provisions that were relics of prior dispute, whether issues going on in the 1990's with the schools. They may not be relevant at this point and it makes sense that if you are going to look at that area that you look at it more broadly.

Mr. Tadych stated that he has no problem in allowing the residents to vote on it. He does feel that the Council could do a more complete job because they know the issues.

Ms. DeGeorge stated that she is fine with Charter Review, but she is worried about the time involved and should someone on Council resign in the interim we are back to where we were making our own decisions and the public dealing with frustrations with that process. Ms. DeGeorge stated that she feels an ordinance would give Council the ability to handle the issues they know best. The Charter Review might be double work. The ordinance may be so well written that it would be easy for the Charter Review Commission to just absorb it. Ms. DeGeorge reiterated that she is concerned something will happen between now and the time of review by the Charter Review Commission.

Mr. Tadych added the matter of the additional time it takes for placing it on the ballot and voting.

Mr. Clark asked Law Director Barbour for his thoughts.

Mr. Barbour stated that from serving as a Council member and then serving on the Charter Review Commission, and now being the Law Director, the best place for it to be discussed and changes to be made would be the Charter Review Commission for the reason that it is a group of people that broadly represents the community. How the Council people are selected and the qualifications should be in the Charter. It should not be an ordinance because an ordinance is subject to change. This group may draft a beautiful ordinance and the next group may change it. Mr. Tadych made comments about activity and maneuvering and while Mr. Barbour doesn't agree and does not think it could ever happen, if that is a concern it should be put in the Charter where it is much harder to change. The public would have direct input by reading the Charter provision and voting directly. This removes any chance of Council being painted with the brush of self-dealing. If you draft an ordinance now and put it in front of the Charter Review Commission and they come up with something that varies from that ordinance, put it in front of the voters, a situation is set up that is confusing and can lead to some potentially imbalanced result that could be avoided. After the recent experience we would want to avoid uncertainty or lack of stability. By having an ordinance and turning it over to Charter Review, you run that risk.

AUDIENCE

Denny Wendell, Queenswood Drive, asked Mr. Tadych if he is on the Tree Commission. Mr. Tadych stated that he is not on the Tree Commission, and Mr. Kelly advised that he is Council's representative to the Tree Commission. Mr. Wendell asked the authority of the Tree Commission based on the situation with the 350 year-old white oak tree.

Mr. Kelly stated that the Tree Commission is an advisory commission made up of citizens of which he is Council's representative. Mr. Barbour stated that there is an ordinance that covers the Tree Commission and it lays out what they are to do specifically. It is basically an advisory committee.

Mr. Wendell asked if the City has any power regarding trees on private property. Mr. Kelly stated that as of currently the Chapter 547 that the Planning Committee is now going over is not

having provisions of trees on private property with the exception of dead, dying, or diseased trees that the Service Director determines are an imminent threat to safety, at which point there is a procedure for citing the property owner and, depending on the circumstances, having the tree removed. As far as preservation, there is no ordinance that allows that and the ordinance proposed by the Tree Commission does not contain any provisions that would have prevented the removal of the older tree to which Mr. Wendell is referring.

Mr. Wendell asked if there can be an ordinance that gives the City more power over trees.

Mr. Kelly stated that this is what the Planning Committee is working through. There is a mixed bag of information on that point. Some would like to see more regulation on private property, and say there are more opportunities. The more extensive you go the more likely you run into issues of regulatory taking. He noted that everyone is working hard on the drafting of the tree ordinance.

Mr. Wendell asked what is going on with the Police Chief.

Mayor Koomar stated that Kathy Leasure submitted her resignation last week. She has 25 years of service. She did submit her resignation effective May 1, 2021 and is currently taking some vacation. The Mayor stated that he really enjoyed her short tenure as chief.

Mr. Wendell asked if Ms. Leasure was forced out.

The Mayor stated that Ms. Leasure resigned of her own free will.

Mr. Wendell asked if there is any chance there is ever going to be a residential Architectural Review Board.

Mr. Tadych stated that he personally would like to see a residential Architectural Board of Review, maybe not as restrictive as we have for the businesses. A residential board would be helpful.

Mr. Kelly said he is not opposed but he thinks it would be better to look at setbacks and things that would address more the issue of scope and size than mandating a particular style. Mr. Kelly recalled when Mr. Wendell attempted to have something in place for his own neighborhood to be named a preservation district. There are such a variety of styles that he is reluctant to have something called an Architectural Review Board that doesn't really look at so much the appearance of a structure but primarily its size on the lot and its height.

Mr. Wendell expressed agreement, noting that he is not trying to dictate architectural styles. He noted that all must agree there have been small houses, especially in Ward 1, torn down with insanely big "meeting code" houses that do not belong on those lots.

Mr. Kelly stated that is where it is more of a question of trying to look at the size issue. The concern is that if you put something in place that is called an Architectural Board of Review and

tell them not to look at the appearance or structure people might consider that something that is apart from an Architectural Board of Review.

Ms. Maier stated that we have not had this much development in the City for a long time. It has brought this to attention a little bit more, but there are certain things than can be done within our existing code to set the size and scale relative to other houses. Ms. Maier noted that she has talked to other planners in areas similar to Bay that have done this. There is something that needs to be done because we do have these disproportionate houses that are going up in neighborhoods. She would tend to be a little more conservative in her approach in looking at what can be done with the existing code that would satisfy the bulk of concerns. Most of the people spoken to are evenly split between no Architectural Board of Review for residences, versus "I want one." When you talk to the people that want one, it is mainly the scale of the house relative to the neighborhood.

ADJOURNMENT

There being no further discussion, the meeting adjourned at 8:00 p.m.

Dwight A. Clark, President of Council

Joan Kemper, Clerk of Council