

City of Bay Village
PLANNING, ZONING, PUBLIC BUILDINGS AND GROUNDS COMMITTEE
May 10, 2021
6:00 p.m.

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

Also Present: Mayor Koomar
Law Director Mark Barbour
Councilman David L. Tadych
Councilman Thomas Kelly

Audience: Harry Shimko, Bev and Sean Crowley, Denny Wendell, Jules Rewald,
Robert Petkash, Walter Van Tilburg, Sam and Coni Fester.

Audience by Zoom; Rosemary Kesselman, Jan Maziasz, Colby Sattler, Jim Blocksidge, Joseph Ptak, Daisy, handsfhealing, Dwight Clark, Mike Polinski, Mary-Alice Frank, Nicholas Noyes, Nicholas Nenxn, Warren Remein, Brad Dawson, Michael “Gr” Nick Dios, JoAnn Post.

Ms. Sara Byrnes Maier, Chairman of the Planning, Zoning, Public Buildings and Grounds Committee, called the meeting to order at 6:00 p.m., thanking everyone in attendance for coming to the Planning, Zoning, Public Buildings and Grounds Committee meeting this evening. Ms. Maier introduced the other two members of the committee, Councilwoman Lydia DeGeorge and Councilman Peter J. Winzig.

Red Oak Subdivision

The first item on the agenda this evening is the Red Oak Subdivision. The Red Oak Subdivision has gone through the Planning Commission, which is part of the process. The project now has to come back through the Planning and Zoning Committee, and then on to the full Council for their action. The Planning Commission did approve the lot split. This is just a lot split, and it doesn't have anything to do with the homes that will come later. It is for the subdivision of the parcel into the three parcels with the street extension. The Planning, Zoning, Public Buildings and Grounds Committee will make a recommendation concerning the Red Oak Subdivision to the Council of the Whole. Council will then proceed to action on approval or disapproval of the lot split.

Ms. Maier explained that we are here this evening to discuss what the Planning, Zoning, Public Buildings and Grounds Committee feels about the subdivision, and called upon comments from the other members of the committee.

Ms. DeGeorge stated that she did not need to share anything at this point.

Ms. Maier advised that the Planning and Zoning Committee is charged to determine compliance with the following code:

City of Bay Village Codified Ordinance 1109.03 - Final plat

(5) *Action by council.* Any proposed subdivision approved by the Planning Commission shall be referred to the Planning and Zoning Committee of Council for study and recommendation of approval, disapproval, or approval with modification. Action by Council of approval or disapproval shall be by resolution or ordinance. A request for modification by the subdivider may be by motion. Council shall approve the proposed subdivision on determination by it that:

(A) The proposed streets are in accordance with the thoroughfare plan and if not, a determination that the proposed streets are so located as to properly serve the subdivision on other areas that connect with or will connect with the subdivision streets;

(B) That all proposed improvements meet the standards for construction set by the City;

(C) That the streets, rights-of-way, easements, and other sites designated for public use are properly offered for dedication as shall be evidenced by a title guarantee in form and to a date as determined by the Director of Law, which title guarantee shall be furnished the City by the subdivider;

(D) Either (1) All improvements for the subdivision have been installed in accordance with the requirements of applicable ordinances, the action of the Planning Commission, and the Director of Public Service and Properties, or (2) Bond or certified check has been posted, which is available to the City and is in a sufficient amount to assure the completion of all required improvements;

(E) That any deed restrictions placed on the property are in recordable form, name the City as a party which may enforce the restrictions, and contain no provisions setting any standards lower than the standards set by ordinances of the City for the property;

(F) That the approval of such subdivision shall be in the best interest of the City.

(6) *Recording.* The City shall record the final plat in the office of the County Recorder of Cuyahoga County, if it is approved by Council, which recording shall not constitute an acceptance of the dedication of streets or any other public lands contained in the subdivision unless the resolution provided in (5) above so provides and an appropriate notation appears on the face of the plat.

(Ord. 58-135. Passed 9-2-58.)

Ms. Maier advised that the City Planning Commission has approved the lot split and forwarded their approval on to City Council. City Council of the Whole has voted unanimously to refer the matter to the Planning, Zoning, Public Buildings and Grounds Committee for review and recommendation to the Council of the Whole.

Ms. Maier explained that she has a dual role in this process because she is the City Council liaison to the Planning Commission. She did act with the Planning Commission in favor of approving the lot split because it did produce lots that were compliant with the City Master Plan and the zoning. The Master Plan does show that the street will go through at some point in the future, and also that it creates uniform lots that are very similar to the existing lots of Red Oak Lane. Ms. Maier's recommendation is that it is consistent with the Master Plan and the zoning, and to approve the lot split.

Ms. Maier opened the discussion to the other members of the committee.

Mrs. DeGeorge stated that she would like to provide a little more background, and an idea of her standing with this matter as a Planning and Zoning Committee member. There was a great deal of public opposition, but it's not enough for the Planning Commission to turn down the project. And that's where Committee referral and Council vote come into play. Part of the consideration for the committee is to recommend to Council whether we approve the lot split or not. The Planning Commission must go by the code, but Council can take into consideration whether or not they feel the subdivision shall be in the best interest of the city. And that is part of our code also. Based on that, and the type of build it is, and the water concerns, the erosion, the creek, the flooding in that area all the way up north, not just directly behind those properties, but north, Ms. DeGeorge is not comfortable with recommending that this be approved as a lot split.

Ms. DeGeorge added that she also sees this type of lot split being a trend. Council is here for the long haul to make the determination of what we want the city to look like. When the fence ordinance was in front of Council, the word that kept coming up was aesthetics. If there was a concern about how a six foot fence versus a four foot fence would affect the look of the city, then there should really be concern about how subdivisions are not just going to affect the look of the city but virtually change who we are. Part of who we are is the charm that we've been able to keep. Ms. DeGeorge stated that she would like to say all types of housing for all types of neighbors, but this type of subdivision excludes starter homes, it excludes seniors who may be on a smaller income to want to downsize. If we approve this, there are other pockets in the city where this will take over, and I'd rather not see that. Based on that, I don't feel comfortable recommending this.

Mr. Winzig stated that regarding this discussion, he has some of the same concerns. One of the things he has heard from both our members on Council and from the community is a concern about the water management. This has passed a certain level of review by the engineers, and he would like to hear from them, and why they think that is a safe approach. Mr. Winzig stated further that he does not know enough about water management engineering, and just saw on the documents that it was approved by FEMA. Mr. Winzig asked that the City Building Director or someone from that group, address the committee to talk about the water management. And then the other concern is the scale of the homes. They meet code, but are we setting precedent in that allowing this project to go forward it may set a precedent that we can't deal with in the future. Mr. Winzig would like to hear from the Building Department and those who reviewed the plans and have them address the committee and explain exactly how they see the project. Mr. Winzig would like to hear that information first before the committee votes on it, if that is possible.

Ms. DeGeorge stated that she would like to add, while considering recommendation, is the improvement plans were approved by a majority of the Planning Commission, but, for anyone who wasn't at that meeting where they voted, there was one Planning Commission member who took a long time to vote yes. Another Planning Commission member said, "Begrudgingly, yes." A third Planning Commission member voted no. This is something to keep in mind. If the Planning Commission is not 100% comfortable with what is happening with this subdivision, and they know what all those lines mean in the sewers and the layout, and they are not 100% with it, "why should I be?"

Ms. Maier stated that the City Engineer did review the plans, which was part of the requirements in going through the lot split. FEMA has not approved the project, but they are giving the City a letter of map amendment for the project. We can certainly have the City Engineer and the Building Director come in and address the Committee. One of the issues in assessing this is we have the gold star Master Plan, we have the basis of our zoning, those are the rules and those are the laws of our City. Most of the concern that has come up with this project is specific to the builder. And that's where there is a lot of issue with it. We can't have one property be responsible for maintaining all the water in the neighborhood or maintaining all the trees in the neighborhood. That is a lot of what is happening in this situation. That becomes an issue when you apply it across the city. There are some things that the other two Commission members have voiced about the scale of the homes. It is becoming exceedingly clear that where there are smaller homes that have giant houses that are going in, the scale is not correct, it doesn't balance. That does refer to the aesthetics. We don't have those changes in place right now. If those changes were in place, there would be more support for denying this request. The idea that one parcel is going to impact the water storage to the entire area, it went through a process of FEMA, a hydrological study was done. There is a big difference in the way homes are constructed now, and the water that has to be controlled, that didn't occur when all your houses were built, or when most of Westlake was developed. So this parcel, theoretically, will hold and store the water better than all the other parcels around it, because we have more stringent laws. Again, it comes to the concern over this particular builder. And that's where my hesitation is. I don't think that if it had been a different builder, that there would be as much opposition. And I also feel like we can't hold one land owner to be responsible for holding all the water and for all the trees in the neighborhood.

Ms. DeGeorge stated that that she has managed to remove the builder and his issues from her thought process when considering this. The Master Plan has always been just a guide, unlike our zoning codes which are the lay of the land. That's why we have the Planning Commission approve it, and why it comes back to Council because we're the ones that set the pace for the City. Council and the Committee is supposed to represent the intent of its constituents. And yet we have a builder, any builder, that comes in and builds, has no intention of living in that home, has no intention of living in this City, and wants to create a subdivision in our town, leave us dealing with, again, the ripple effect that it will have throughout the City. Ms. DeGeorge stated further that she would rather represent the constituents and what they want. We've heard loud and clear from this particular area, but I feel confident that if this were happening in any other area of town, Ward 4, or whatever, it would be the same push back.

Building Director Tuck-Macalla advised that he sent everyone a memo regarding basically the

breakdown on the engineering work. The applicant's engineer went through all the steps with FEMA, to get a letter of map amendment. Those studies were chosen by our engineer, Mr. Don Bierut of Chagrin Valley Engineering. Mr. Bierut provided two reports to the Planning Commission because they requested additional information. Mr. Bierut signed off on the plat, and would not do that if he was not one hundred percent confident in the outcomes. What he signed off of was the splitting of the lots; he wasn't signing off on each individual home, or the drainage of each individual home. That comes later, once they present a set a set of plans to the Building Department. For each lot there's a there's a survey, topographical study and grades. That goes to Bramhall Engineering for review and then comes back to the Building Department. Bramhall Engineering is called out before the footer is poured, and after the first floor is done to check to see if the first floor matches the plans, They are then called out for the final grading, and this is the procedure for every single, new home in the City. Everyone is talking about the size, density, the fit, which Mr. Tuck-Macalla noted he understands as he lives in the same area of the subdivision and all of the other homes being built in the area. All of those things are built into the code. No one is getting any special treatment or variances for the big houses that seem out of character. The houses that would be built in this area would be much like the houses that are on the other side of Red Oak Lane to the north. It would be basically the same type and size of houses. You could not fit a house bigger than those on those size lots.

Ms. DeGeorge stated that she understands that this is built into the code, but also thinks the fact that it has to go to Council for a vote is intended to be the checks and balances of, again, what we want the city to look like. We're talking about a subdivision plan that is in our code that is thirty-two years old, and a thoroughfare plan that is sixty-three years old. That many years ago anyone on Council may have never envisioned what could be happening today with this type of housing and money flowing in, and that Bay Village would even want to change its basic look. I understand it is incumbent upon us, if we want that change that we have to make that change in the code, but I keep going back to the fact that it does come to Council because we are tasked with deciding what is in the best interest of the city. If that is what the committee wants to say as well, we think this is in the best interest of the city, then vote that way. But I personally don't think it's in the best interest of the city.

Ms. DeGeorge addressed Law Director Barbour for clarification regarding the Final Plat 110903, where it says that any deed restrictions placed on the property are in recordable form and name the city as a party which may enforce restrictions. Ms. DeGeorge asked Mr. Barbour for an example of what that might be.

Mr. Barbour stated that deed restrictions are restrictions on the use of property that are placed by the transfer or the person who writes the deed and owns the property. The classic examples would be a homeowner's association, those operate under deed restrictions. For example, there's a place called The Lagoons in Vermillion where every house has to have either a green asphalt shingle roof or a black asphalt shingle roof. So typically, for a developer, or homeowners association, they all involve the way the property looks, such as each property shall have an asphalt driveway, or concrete driveway or side-loading garage, or shall not have a front porch or some other design feature. Huntington Woods has some deed restrictions. The reason they are written in a way that the city shall, as a party, which may enforce the restrictions is after all properties are sold in a typical subdivision there is no one left to enforce the deed restrictions.

There has to be an entity to enforce the deed restrictions if there's not a homeowner's association that is charged with that responsibility. Typically, it is agreed-upon matters by developers putting in many houses and they want it to look a certain way. The municipality has restrictions in our code. You must have a single family residence in this district, or a building can only be so high, those kind of things. The City would not have deed restrictions. The City has building codes.

Ms. DeGeorge asked if this particular developer could include the restrictions on this subdivision.

Mr. Barbour stated that anybody who transfers property by deed can put a restrictive covenant in that deed that dictates what you can do.

Ms. DeGeorge asked at what point that would happen. When he sold the property, when he bought the property, and would we know about it at any point? How would that work? When would deed restrictions be placed on the property?

Mr. Barbour stated that deed restrictions would be placed on the property when it is transferred.

Ms. DeGeorge asked if this would be to the owner, after he has built it.

Mr. Barbour answered, "Typically, yes."

Ms. DeGeorge asked if it is something that affects the city, the city must be made aware of it, that the city would enforce it.

Mr. Barbour answered, using the example of the roof required to be a certain color, because they want the houses to look a certain way. The restriction is written in the deed, the roof has to be green and now I give the City of Bay Village the right to enforce that in perpetuity. Otherwise, there isn't anyone else to enforce the restriction, unless there is a homeowners' association. In Huntington Woods there is a homeowners' association, which technically has the power to enforce deed restrictions. Mr. Barbour noted that the last deed he saw at Huntington Woods did not give the City the right to enforce deed restrictions. These restrictive covenants typically involve the use of the property restricting it to, for example, residential only, or certain kinds of structures, or not permitting certain kinds of structures like pole barns, or they can go so far as to say you can't park recreational vehicles in the driveway, garages must be side-load, not front-load, so you don't see the garage door, or anything you can think of to govern the way property might look so there's a certain degree of uniformity throughout the neighborhood.

Ms. Maier noted that those deed restrictions are also recorded in the county, so anyone that purchases a home would see that on their title search. Mr. Barbour commented that the deed restrictions are literally written into the deed. When purchasing a piece of property a title search should be done.

Ms. DeGeorge stated that because it fell under what the committee is supposed to look at that is why she wanted to know when, primarily, those could be put in place. Why are we looking at it if it doesn't have to be put in place until the builder sells it to who is going to be a resident?

Mr. Barbour stated that typically the way that this ordinance is, it is not particularly crafted for a single lot, which is what this subdivision really is. It's for a larger expanse. So you would as part of your process, you would have planning that would have been done that would say these are all center hall colonials with side-load garages that are not going to permit pole barns, whatever your restrictions are, i.e., all the driveways have to be concrete, and there's no front porches. The developer would tell you that he intended to have deed restrictions. That is not going to apply to this one single block.

Ms. Maier asked if the City has ever allowed a parcel to be deeded across the street so that it would be connected with the street running through it so that you are not left with one unbuildable lot.

Mr. Barbour stated that there are parcels that run across the paper street, Calvin Rd., and the Knickerbocker extension. There are people who own lots on both sides and they are the same Permanent Parcel number. A property owner can own the parcel across the street. You cannot divide property and leave an unbuildable lot. The Building Director and City Engineer would determine whether the lot is currently buildable or not. Part of the FEMA matters relates to whether a basement is put in on the lot. Mr. Barbour stated that he would defer to the Building Director and Engineer to determine if it is buildable once it is divided, whether a house without a basement could be constructed there the way it currently is.

Ms. Maier stated that it should be based on the plans if they did not put in a basement. Mr. Tuck-Macalla agreed that if a road went in it would be a buildable lot. There wouldn't have to be any improvements on it, just put in a house with no basement. Then it would be up to the Building Director to make sure that all livable space is above the flood zone. Basically that would be where you would build.

Mr. Barbour stated that this Red Oak Lane Subdivision matter is before City Council pursuant to Codified Ordinance 1109.03 (5). There are six components to that code section, one of which is that the approval of the subdivision shall be in the best interest of the City. There are also five other components that need to be considered, some of which are technical matters.

Mr. Winzig noted that it would help the Committee to walk through each of the five components.

Mr. Barbour agreed, stating that it is hoped that as the Committee progresses through this, all of these components will be considered.

Ms. Maier read the five requirements following the first requirement of referral for Council action.

(A) The proposed streets are in accordance with the thoroughfare plan and if not, a determination that the proposed streets are so located as to properly serve the subdivision on other areas that connect with or will connect with the subdivision streets.

Ms. Maier stated that the Planning Commission did find that in accordance with the

Thoroughfare Plan the subdivision actually provides an improvement to the dead end that is there. It isn't a permanent cul-de-sac because the street would eventually connect.

Mr. Winzig stated that condition (A) can be checked off as a "yes."

(B) That all proposed improvements meet the standards for construction set by the City.

Ms. Maier stated this is where the sign-offs from the Fire and Police Department that access and turning radius for the fire apparatus are achieved with the turn-around, and that the subdivision does meet the zoning code requirements.

Mr. Barbour stated that this would also include the construction of the road.

Mr. Winzig stated that there are views of the property available. The drawings show a super-imposed pumper truck from the fire station that would have the proper ability to move into the space, turn around, and go back out. The committee has reviewed these drawings.

(C) That the streets, rights-of-way, easements, and other sites designated for public use are properly offered for dedication as shall be evidenced by a title guarantee in form and to a date as determined by the Director of Law, which title guarantee shall be furnished the City by the subdivider.

Mr. Barbour stated that (C) is proof that the builder actually owns the property, including the parts that will end up being the right-of-way, the street, utilities, etc. They will have to present a title guarantee. At this point in time that has not been done.

Mr. Winzig asked if the builder needs to do this before the Committee votes on the matter.

Mr. Barbour stated that it must be done before the whole body of Council votes on the subdivision. The City Council Planning and Zoning Committee can say as part of their vote that approval is subject to providing a title guarantee. Mr. Barbour stated that he would suggest prior to the vote of the whole Council the title guarantee be provided. For the purposes of the Planning and Zoning Committee the Committee could decide that they approve or disapprove, or approve with modifications without the evidence of the title guarantee because the Committee is making a finding, determination, or recommendation that is going to the entire body of City Council.

(D) Either (1) All improvements for the subdivision have been installed in accordance with the requirements of applicable ordinances, the action of the Planning Commission, and the Director of Public Service and Properties, or (2) Bond or certified check has been posted, which is available to the City and is in a sufficient amount to assure the completion of all required improvements.

Mr. Barbour stated that the improvements have not yet been done. It would be required to post a bond in an amount determined by the City Engineer to cover the completion of the required improvements and improvements on the roadway and sewer connection.

Mr. Winzig asked if the utility in the roadway is the sewer connection. Mr. Barbour stated that it is the sewer connection. The roadway is about 85 feet.

(E) That any deed restrictions placed on the property are in recordable form, name the City as a party which may enforce the restrictions, and contain no provisions setting any standards lower than the standards set by ordinances of the City for the property.

Ms. Maier noted that this discussion was held earlier in the meeting. Mr. Barbour stated that deed restrictions would not be valid if they did not meet our Building Code.

(F) That the approval of such subdivision shall be in the best interest of the City.

Ms. Maier stated that this also has been discussed.

(6) *Recording*. The City shall record the final plat in the office of the County Recorder of Cuyahoga County, if it is approved by Council, which recording shall not constitute an acceptance of the dedication of streets or any other public lands contained in the subdivision unless the resolution provided in (5) above so provides and an appropriate notation appears on the face of the plat.

(Ord. 58-135. Passed 9-2-58.)

Mr. Winzig stated that the other issue that has come up is that aside from this specific subdivision there is some concern from residents downstream that there may be a water issue based on this development that may affect the property. Mr. Winzig hopes to hear from Bramhall Engineering, or the City Engineer to explain the potential that this could happen and the assurance that it is not going to happen. The three Committee members are not water engineers with the ability to make that assessment, but, those homeowners further downstream are concerned about that and are already dealing with excessive water issues. Councilman Tadych mentioned that there was a concern that he had heard from some of the residents.

Ms. Maier stated that this issue factored into a lot of the Planning Commission meetings over the summer. The hydraulic study was performed with the FEMA work to verify there would be no impacts to the creek. Ms. Maier noted that she had a lengthy exchange with the City Engineer after reviewing the report and he did say that everything checked out with the model. There are very strict parameters for doing these studies. From the standpoint of the Planning Commission that concern has been satisfied and the property is not going to impact the other homes downstream. We are dealing with larger issues of water runoff.

Ms. DeGeorge stated that about two weeks ago she visited the area with Councilman Tadych. It was one of those days where it had rained the entire night before and it was, in fact, raining the day they went to the area. The creek was considerably higher than when there are dry periods. There are a couple of properties on Red Oak, along the creek that are already taking steps to reinforce a retaining wall because it has been eroded against. As you go north, the creek narrows, there are smaller homes, possibly the same amount of money isn't there to invest to protect their properties, and that is a major point of concern that was brought up before. Ms.

DeGeorge stated that she would rather err on the side of caution than create additional problems for the neighborhood or new residents.

Ms. Maier asked if members of the Committee wished to make further comments.

Mr. Winzig stated that if there is another meeting on this matter, it would help the Committee to put these plans projected on the screen and have Director Tuck-Macalla or the City Engineer reinforce what is on the documents. There is a note on the plans about the FEMA flood plan with a box around it and an arrow; a little more information would be helpful.

Ms. Maier will ask that an invitation be extended to the City Engineer and Director Tuck-Macalla for the next meeting.

Mr. Winzig stated that at this point in the review he does not think we are previewing the builder. The builder is not mentioned in the criteria for the Committee to advance the matter to Council of the Whole. Councilwoman DeGeorge mentioned that as well, that at this point it is not a builder capability issue as it impacts what the Committee is asked to review.

Ms. Maier called for comments from the audience.

Denny Wendell, 451 Queenswood Drive, stated that his concern, and the concern of others in Ward 1, is building big houses on bungalow streets. It lowers the property values for the houses next door. Every time these issues come up the answer is that they fit the building code. Council members review city codes.

Ms. Maier stated that going through this process with Red Oak and other developments in the City has highlighted the various need to do that, and the need for a residential board or just modifications within the existing code. That's where the public comment is really impactful and very helpful.

Mr. Wendell asked the name of the builder for the Red Oak Subdivision.

Ms. Maier stated that the builder is Ed Pavicic.

Is this the gentleman from the Humiston Street construction where there were problems with those houses?

Mr. Tuck-Macalla answered yes.

Mr. Wendell stated that at that point in time, years ago, when that construction on Humiston was happening, also with water run-off, height of the foundation and other problems, some of the members of Council said this man should not be building in our City. Is he on the approved list?

Ms. Maier stated that this was discussed in one of the Planning Commission members and Director Tuck-Macalla spoke about the contractors' license. There is a very narrow way that contractors are not allowed to practice, and it has to be a felony condition that is related to

building.

Mr. Wendell stated that somebody that builds sloppily, and just so he doesn't have a felony, he can still build?

Ms. Maier stated that they have to follow the building code. Mr. Tuck-Macalla added that a builder cannot build in the city if he is banned by the Secretary of State. In 20 years I've only seen one, one builder that was not able to build. They're not approved by the city just registered by the city after paying \$100 and having proof of the proper insurance. We make sure he has the proper insurance, his taxes are paid, and that he pays his Workmen's' Compensation bill.

Mr. Jules Rewald, resident, stated that he happens to live right next to where the builder wants to build his houses. Mr. Rewald presented a series of photographs that showed a home the builder in question is building on Eaton Way. He noted that the builder wants to build a home very close to Mr. Rewald's home. An additional picture was of a garage the builder is building and told the City it was just going to be a mud room. Mr. Rewald spoke of his concern of water run-off and presented additional pictures, stating that he does not know how this will affect people downstream. He displayed a photograph of six inches of water, noting that the water is going downhill against his foundation which will cause him to have cracked walls and windows that don't open. Another picture was displayed by Mr. Rewald of his home with windows that will be facing the home being built. He expressed concern about the ability to look into the windows of both homes, from one home to the other.

Ms. Maier addressed Mr. Rewald stating that she understands where he is coming from, and understands his frustration.

Ms. Maier asked if there were any other comments from the audience.

Mr. Winzig asked Building Director Tuck-Macalla if there is anything in the current code that this new structure would violate as far as the distance from the neighbor's property. Not so much if it's a good idea or a bad idea, but as outlined by the code.

Mr. Tuck-Macalla stated he does not have plans for the structure in front of the Building Department, but as soon as they are presented to the Building Department Mr. Tuck-Macalla uses the zoning code to check for sideyard setbacks, front yard setback, and rear yard setback. When the developer came to Mr. Tuck-Macalla he checked the zoning code and said yes, these plots are the size that you can build on in a Residential-3 District.

Mr. Winzig asked the standard distance for a lot in this location. Mr. Tuck-Macalla stated that in a Residential-3 District it can be as small as six feet from the property line to the house.

Mr. Barbour stated that lots have minimum sizes, based on whether it is a Residential-3 District, or a Residential-1 District.

Ms. Maier advised that the plans show where the building envelope can go, basically a footprint of the house.

Mr. Winzig stated that the drawings appear it is a 10 foot distance for the sideyard setback. The plans say that the total sideyard setback cannot exceed 25 ½ feet.

Mr. Tuck-Macalla stated that the existing home has its own setback requirements and those are the ones that are on the plans Mr. Winzig is looking through. The house that is proposed is not on those plans. The minimum size is 6 feet, but it changes with the frontage of the lot. If the lot is 50 ft., the smallest would be 6 ft., with a 70 foot frontage on the lot it would be 7 or 8 ft. The smallest sideyard permissible is 6 feet.

Mr. Rewald stated that he measured the distance from his property line to the other property line where the builder wants to put the house on Forestview Drive and he has exactly 48 feet to work with. Mr. Rewald questioned how the builder will put the house where he proposes in that area and still meet the necessary restrictions.

Ms. Maier stated that she believes there has been an email about irregular lot lines for that parcel, which might be part of the issue.

Mr. Tuck-Macalla stated that is correct. Mr. Rewald's lot line runs down the side and once it gets behind the garage it jogs back in towards the north.

Mr. Rewald stated that the City insisted that he have a topographical survey done, when he put up his fence. From his property line, to the other side is 48 feet. Mr. Rewald suggested that the code may need to be updated so that homes are not jammed into each other. He suggested that there might need to be an update to what is now, not what was 50 years ago.

Ms. Maier asked if there are any other comments from anyone in the room

Mr. Robert Petkash, 574 Red Oak Lane stated that the creek we're talking about runs through the background. In the past couple of days it has been raging higher than a week or so ago. The two sublots that don't have buildings on them now are advertised for sale, with houses with their footprint and the concrete cover nearly 50% of the lot area, maybe 40% or something in that range. The current natural drainage that is there will be significantly reduced. There will be run-off on the neighboring properties. In order to build on the lot that abuts the creek, there will have to be a significant amount of fill because it is currently in the flood plain. When that happens it will kill all the trees and there will be a significant reduction in the tree canopy in the area. There are so many different ramifications of adding more structure into those lots; it just doesn't make a whole lot of common sense. Over the past year, I've written several times to Council expressing the community's dislike for the continuation. I submitted a letter that I composed along with some 42 signatures of people in the area objecting to the continuation. It seems to be the desires of the neighborhood are being ignored. The houses proposed are enormous; they don't match the area. They are not similar to the north Red Oak as Mr. Tuck-Macalla said. They are oversized in comparison, bigger than anything north or south. They look like some kind of mausoleum and they' are ugly, big farmhouse type structures.

Ms. Maier stated that they will request the City Engineer come in to address some of the erosion

concerns and the water containment concerns. The Building Codes require that the land hold water and that it not shed onto the neighbors. It is different from how all the other houses in the neighborhood were built. Some of those requirements did not exist. There should be much better water containment now. The City Engineer will discuss that and what parameters there are for insuring that the run-off does not go onto neighboring property.

Ms. Maier commented about the point brought forward that the builder is advertising the lots. She contacted the Board of Realtors, and the state, and the builder is doing everything within his right the way the house is listed even though it has not gone through the whole process. It is what he is entitled to do to pre-market those properties. It's putting the cart before the horse for sure, and perhaps not the best thing to do, but he is well within his rights and has not broken any laws. It was assumed at some point that the lots were already approved by the city; that is not the case. The way the lots are being marketed does not violate anything.

Ms. Maier called for comments from the Zoom audience.

Mary-Alice Frank, 25145 Wolf Road, stated that some people are concerned about the builder. Ms. Frank stated that there are plenty of us that aren't and, in fact she looked at two of his homes, one that was already built in Bay Village, and ones he was designing in Westlake before she decided to purchase her home. She stated that she would not have been uncomfortable, buying a home from him. What would be the bigger picture thing to do here is to update the code in Bay Village. Things are changing here rapidly, all kinds of new homes are coming in. And I've said this before, you can either look like Strongsville, or you can continue to have the charm of Bay Village, which is one of the reasons people move here. These lots are not going to go anywhere he'll still hold them, they'll still be an asset. So why not go back and do the heavy lifting, because this is going to go come up again. And you know, you said it would improve the neighborhood because the cul-de-sac wouldn't look so ugly? Well, that's easily rectified by taking out that metal guardrail and putting in arborvitae. The other irony is we're talking about the tree canopy all the time, and restricting what trees people can take down. Ms. Frank noted that it is not lost on her that there is the possibility of killing a lot of trees in that area and doing a great deal of damage. Ms. Frank asked why this is called a subdivision.

Mr. Barbour stated that it is an extension of a road that meets the definition of the City Code.

Ms. Maier thanked everyone for their comments. Putting the emphasis on having something that fits with the community and what that looks like and the work that needs to be done has come to the fore because of development in the city that we haven't really had in a long time. That is something that this Committee may be working on in the future as the result of the public comment and the feedback coming through. Ms. Maier stated that she does want to clarify that her point of the improvements, the existing situation is that by putting in the turn-around fire apparatus and vehicles to get through the area that is what she spoke to in terms of improvement to the existing conditions.

Mr. Joe Ptak, 566 Red Oak Lane, stated that he would like to echo some of the things that have already been said, especially about the builder. His concern is not about this particular builder; it's about the type of development that this builder is doing. But there are other builders who are

doing very similar types of development in the same neighborhood just a few blocks away, and he has the same concerns about them. It's about the long term impact of the city that this type of development has especially with the aesthetics and the way it's changing the character of the city, but also very specific concerns is about water management. As Mr. Petkash said the creek doubles in size; it far more than doubles in size. With a good rain, it'll rise three to four feet. Mr. Ptak stated that he is currently spending some significant money reinforcing his retaining wall that runs between his house and the creek. He was particularly concerned to hear that in the development of the lots, they're talking about putting all this fill in, but not putting in a retaining wall. When that Creek starts rising during a storm, it's just going to take all of that fill off of that lot if there's no retaining wall to hold it in place. Three or four of the houses, to the south of the proposed development area, all have retaining walls. Mr. Ptak does not understand how that is not something that would be required here, especially given the quantity of fill. Mr. Ptak issued an invitation for members of Council to visit the area to see exactly how low this land is and to understand that it serves as drainage for the entire neighborhood. One of the things that Mr. Tadych was surprised to find out is that the neighborhood's storm sewers actually drain into the creek. None of the runoff from the gutters or the roof or anything like that is going to go into the yard and affect neighboring houses, it's going to drain into the creek, putting the road through all the water that the hard surface of the road is going to collect is going to go into the creek. The creek already is almost cresting the retaining wall that exists on the houses mentioned. Mr. Ptak feels that a lot of these concerns have not been completely addressed. Mr. Ptak invited anyone to use his property to get a view of the creek to really understand what the impact of the water in particular that this project could have.

Mr. Nick Noyes, 559 Forestview stated that he is generally in favor of allowing people to sort of ply their chosen trade. He does have serious concerns about the builder in this case. He does not know if it's legally defined in terms of what is appropriate criteria to choose or to look at when it comes to what is or is not in the best interest of the city. He stated that he can speak from experience because they bought the house directly across the street, across Forestview, built by the same builder. And, you know, speaking to what Mary-Alice Frank said, they walked through a number of homes, they walked through this home of his and were comfortable buying it because it looked very nice. That said, they have spent at this point, upwards of \$60,000 fixing issues which should have been covered by his warranty and which he fought tooth and nail to not take care of. Rather than continuing to fight him, they have just documented everything, taken care of the repairs, and hopefully, eventually recover it through a lawsuit. Some of the concerns, frankly, speak to or exacerbate some of the other concerns heard from other property owners such as the, the setback issue. Mysteriously, it turns out that their house is about two feet closer to the property line than was reflected on the plan submitted to the City. That has caused serious problems with the ability to use the garage, which faces out to the property line. They came to whoever approves variances and said they really need to do something to take care of this. They were denied any ability to move forward with the solutions that we thought were reasonable, and which our neighbors approved of. Mr. Noyes stated that he was very disappointed that this is something that the City allowed to happen, and then denied them the ability to take care of and, he questions whether or not the city will exercise appropriate oversight to make sure that these concerns are mitigated or taken care of going forward with, in this case, potentially four different homes impacting a number of different homeowners. Mr. Noyes stated that he feels like the

people that you choose to do business with, or to allow to do business with here, really are relevant criteria. He is not for prohibiting builders from plying their trade, certainly not without giving them a fair shake, but their experience has been very bad. He fears that that will be the same experience that these potential buyers have, regardless of how nice the product may appear on the surface of things. He does not doubt the Coty did everything to the best of their ability to make sure that things were built to code, but they also have drainage problems. Things were not properly graded, and they spent many thousands of dollars, and that's still not really fixed on their property. He fears that this is going to end up really poorly for whoever ends up buying those lots, and he urges the city to exercise real caution and discretion in moving forward with this.

Ms. Maier thanked everyone for sharing their comments. She stated that the agenda will transition over to the Tree Ordinance at this point. Ms. Maier noted the schedule of future Planning, Zoning, Public Buildings and Grounds Committee meetings, with the next meeting scheduled for May 19, 2021 at 6 p.m. to hear this matter again. An agenda for the meeting will be published on the City's website. Director Tuck-Macalla or Law Director Barbour will reach out to the City Engineer to be present at the meeting.

Tree Ordinance C.O. 547

After a brief recess, Ms. Maier called the meeting back to order to review the Tree Ordinance, C.O. 547. We have gone through the ordinance, in prior meetings, and looked at the draft ordinance put together by the Tree Commission, and made some modifications. In the meantime, Councilman Winzig was added to the Planning and Zoning Committee and had some really fresh ideas about adding additional material into the Tree Ordinance. We have a mark-up of the draft that we have and we are at the point of Proper Trimming and Maintenance.

Ms. Maier stated that she reached out to Colby Sattler who is on the Tree Commission. The Tree Commission is meeting tomorrow, Tuesday, May 11, with a regularly scheduled meeting about trying to do a joint session with the Planning and Zoning Committee since they were the original authors of this draft legislation to incorporate some of those additional elements. Ms. Maier received an email from Mr. Sattler today about that, and a time that works for both groups will be found.

Ms. Maier stated that Councilman Winzig has put together some materials after research that include some best practices from across the country and within the City of Dublin, Ohio, which are always a great model for anything planning related.

Mr. Winzig related a couple points in the ordinances that he found. The ordinances had a term "Heritage Tree," and he would ask the commission and our committee to determine if this is something appropriate for the Bay Village area. Mr. Doyle brought us a concern about preserving big oak trees. And if it's that type of tree, or anything else that we would want to deem a Heritage Tree, it may allow us to give an additional protection, aside from other trees that may be in the area. It may not be appropriate for this part of the country, but I just ask that we take a look at that, because it seems prevalent in our community and also of concern, both in protection and then when they become diseased, extended protection, so it doesn't spread with

Oak Wilt, as we have discussed in the past. Mr. Winzig continued, noting that there's a whole section that he found about landscaping, and in our current ordinance, our landscaping pages are a paragraph at best. There are four sections within the charter, and it's all the same language, they just change out cluster development, apartment district, and office district. The ordinance from the City of Dublin is very extensive in regard to landscaping. If the Committee or Commission would take a look at that, perhaps we could glean something from their code that could help us. The reason I bring that up is because projects like the Bay Creek project, the new library project, potential zoning overlay, and the new Heinen's parking lot project are all going to have some landscaping as part of their redesign or design, and to have specific guidelines in the code would be really helpful. Dublin did a great job of being incredibly specific about islands and separation of parking lots, number of parking lots, lighting, tree height and shrubbery. It is very detailed and would be good for the Committee to review.

The other general comment, is that it was in the Mecklenburg document, they were very specific using the terms maintenance and protection of trees. And so much of the conversation that we've been exposed to both at the Tree Commission, and also within our Committee and from the community is this idea of "protecting" trees. Our current draft ordinance talks about not wanting to hang electric wires or cut the bark, but other communities go on to be very specific about protecting trees on public property, and protecting trees on private property. They do a real nice job of explaining that in detail, and that may be a good thing for our residents. I know behind that is guidelines specifically for a developer. Red Oak is a good example. If you read what other communities have done, they require an offset of the number of trees that are cut down, there's an offset of trees that are replanted within the community. We currently don't have that detail. Mr. Winzig would hope that we could take both Dublin and Mecklenburg documents and sort of glean from them what could really help us on the protection side. Going forward, we're sort of saying back to the community and through our code that we are committed to protection. It's not just about marking the trees or wires or anything, but it's the concept of protecting and in the event that the trees are taken down is there a very specific language in what gets replanted? And where that could be? Or, is there money that goes into a fund that the city can then reinvest?

Ms. Maier stated that in our draft with the caliper requirement and the size of trees being removed, there would be a replanting requirement on the parcel or in a designated location for the City that is contemplated. She asked if Mr. Winzig's research indicates that it is stronger language.

Mr. Winzig stated that he thought just the detail they provided might strengthen that section of the ordinance.

Ms. Maier stated that to be clear, a lot of these are things that would be on commercial property and redevelopment. We did talk about that; what you're able to do with an exaction. When someone is coming in to get a building permit that is where you can do those requirements.

Mr. Winzig stated that one sentence that he highlighted in the Mecklenburg document references a tree "save" area. It says a minimum of 15% of the overall commercial site must be preserved as a tree saving area. He does not know if it's appropriate, but it's nice to see it. It's very clear. And they also go on the same number of trees per acre. Bay Village is not huge

commercial development because so much of the land has been developed. But if we can solve some of this, and then going forward with the potential zoning overlay, to kind of look back and say, it's good that we have that in place in the event that those projects move forward.

Mr. Barbour stated that the difference legally from a resident who just wants to take down a tree and somebody who is coming in and obtaining a building permit to construct an addition or a new house or expand a shopping center or something like that, there's going to be a difference in what the law is going to allow, from a regulatory standpoint, in order to prevent a regulatory taking of private property. Mr. Barbour stated that he apologizes because he has not looked at the Mecklenburg document in a while, so he does not know the section that Mr. Winzig is referencing, but it seems, based on his quote, to be commercial property.

Mr. Winzig stated that they have both commercial and residential.

Mr. Barbour stated that he would be interested in seeing the part about residential and how they get around the regulatory taking.

Mr. Winzig stated that he did not think that section held any requirement of the resident, it was more a guideline. The core of the guideline was you should have a permit and you should, in the event that you use a contractor, that they are an approved contractor by the city and that the materials are removed, and stored off site, and if stored on site, that they're stored properly, such as a woodpile or something. It wasn't the punitive side, trying to come back to the homeowner and say, you have to pay a fee. That was more on the commercial developer.

Mr. Barbour stated that he looked at the Ohio ordinances. He did not go out of state. The best ones have a really strong educational component and they have an educational outlet of some kind. For example, their Tree Commission, in some of the larger cities will provide materials. When somebody would express an interest in removing a tree it would trigger a process where a tree commission will provide them either at the place they're getting the permit or some other means with information about kind of a right and wrong way to have a tree taken down with some alternatives, it might be fir replanting, and all those kinds of things.

Mr. Winzig stated that one of the documents he shared with the group last time was what he called the proposed Tree Preservation Plan. It may not be in the code or in the ordinance, but it may be something that our residents can refer to, along with contractors and landscape designers.. In the Table of Contents was authority preservation procedure. City tree grants, a list of trees, both small, medium and large, Native Heritage trees and trees not recommended. The sample was a guideline that would give the homeowner a general idea of the vision that the City has. This was from Linwood, Washington, who gets quoted quite often in the white papers. It also included procedures to follow during construction or on private property. That could be referenced in the code. It may take a little bit more work to make this really good. Mr. Barbour stated that it would be good if you could get this kind of information to them well before they're thinking about taking down the tree some way. Mr. Winzig stated that it goes into a great detail on specific true guidelines and trees that might be invasive and non-invasive. They are very detailed about the type of tree and growth, and if we could provide that to the residents it would be fabulous.

Ms. Maier stated that the Tree Commission is wanting to be more of a resource and building out that for the community. It's a good opportunity to work directly with them now that we've gone through the draft and made our mark-ups to see what is in the code or additional materials that goes along with what we like, such as proper pruning techniques. The Planning and Zoning Committee is scheduled to meet again on May 19 at 6 p.m. There is a Tree Commission meeting tomorrow, May 11, at 7 p.m. which Ms. Maier will attend. We have already spent an hour and a half here tonight. At this point, rather than get into any other details, what we will review for the next meeting is going through the ordinance and highlight more of those best practices and integration with Commission's work. We have meetings scheduled throughout the rest of May and June as well.

Mr. Winzig stated that he can forward to the Tree Commission some of these references. Mr. Winzig noted that he feels good about the direction that we're headed. It just needs to be a little beefier and helpful to the residents so they can have a real good understanding of what to do.

Sean Crowley, 26508 Bruce Road, stated that his wife and he love the trees in Bay Village and cringe every time a big one comes down. He also believes in property rights and completely opposes any permitting requirements for a resident to take down their own tree for any reason, or to fine them if they take down a tree by forcing them to plant or put money in a tree fund. Mr. Crowley loves the idea about education, promotion, and planting trees on public property.

Chat comments were heard at this point and are attached to the copy of these minutes for reference.

In reference to Mr. Sattler's comment that the City has a "Grand and Glorious" designation for trees, Councilman Kelly stated this provision has been in place for a while but it was more of an award process, or recognition of the trees, rather than additional protections or burdens.

Mr. Barbour stated that the United States Constitution starts with the principle that we can't take private property without just compensation. And the way that jurisprudence has developed is that government entities can pass laws that effectively prevent people from using their property effectively. And there's a series of tests that have to be applied. It's not a bright line rule. So we need to be careful when we pass legislation that affects people's use of property. And we don't compensate them for it. Especially when it relates to trees, trees hold a special category in property. Because unlike your garage or your plants or driveway, the tree is actually property itself and is it's protected under the law. If somebody comes and cuts down one of your trees there's a statute in Ohio that gives you damages against that person. Various courts have held that if you're too restrictive, and how entities can dispose of trees and what they can do with trees has been held to be a regulatory taking. What is not a regulatory taking is if you couple that regulation of trees with obtaining a permit, meaning a building permit or development permit, not just permit to cut down a tree, if you were to get a building permit to expand your house or build a house, or to build a commercial development. That is termed an exaction and the municipality or the county is allowed to trade the obtaining of that permit in return for a promise by the property owner to not cut down certain trees or to replace certain trees either converting it to a dollar amount and putting it in a fund, or physically replanting trees on the property. It is not

Planning and Zoning Committee
May 10, 2021

so much residential versus commercial, as it is obtaining a permit to build or expand property versus just for removing a tree. If you place too many restrictions on removing a tree, that is a regulatory taking. If you link it to a permit for expanding property, that is an exaction and you would be permitted to do that.

Walter Van Tilburg, 26500 Bruce Road asked how many arborists are on staff. He was informed that there are two arborists on staff. Mr. Van Tilburg suggested hiring additional arborists. Ms. Maier stated that this will be considered along with the new legislation. One of the City arborists is a member of the Tree Commission.

Mr. Van Tilburg stated that two years ago he called in and asked an arborist to look at the Red Bud tree on the tree lawn at his property. He has not heard from or seen him since. He noted that he has a dead tree in his back yard that must be removed before it comes down.

Ms. Maier thanked everyone for their time this evening. The meeting adjourned at 7:47 p.m. The Planning, Zoning, Public Buildings and Grounds Committee will meet again at 6 p.m. on Wednesday, May 19, 2021.

Sara Byrnes Maier, Chair

Joan Kemper, Clerk of Council