

City of Bay Village
PLANNING, ZONING, PUBLIC BUILDINGS AND GROUNDS COMMITTEE
May 24, 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
City Engineer Don Bierut
Building Director Eric Tuck-Macalla

Audience: Gary Sharp, Jules Rewald, Robert Petkash, Sam and Coni Festor.

Audience by Zoom: Warren Remein, Joseph Ptak, Claire Banasiak, Jim Blocksidge, Daisy, Martha Raymond, Jim Maziasz.

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

Ms. Maier stated that the Red Oak Subdivision was discussed at the last meeting of this committee, and there were several questions from the committee about the prior hydrological study that was done. City Engineer Don Bierut is here this evening to address the committee and answer questions.

The questions that came up repeatedly through comments and also from the committee were related to the storm water management on the site as well as general questions about flooding, holding the water on the site, impervious surface, and lost trees. Ms. Maier called upon City Engineer Don Bierut to give background on the studies that were done and the process with the Planning Commission who granted approval for the subdivision.

Mr. Don Bierut stated that the property the Tuttle Creek falls in has an undefined elevation on the flood zone. The applicant several years ago said they would like to be assigned an elevation, which FEMA did. They then approached the Planning Commission with an improvement plan, applying to develop two properties and renovate a third property. They presented at that time a grading plan that showed fill, and at that point they hired an engineer to perform a study on the creek to see what would happen if they filled in that area above the level that FEMA said was allowable. The engineering firm that did that has been around a long time. The City has

reviewed their work many times and there were some significant differences on some very large projects in other municipalities. In this case, they determined, and it was checked. Over 800 acres drain into the Tuttle Creek, which is 1.4 square miles; not huge, but significant. When the developer submitted proposed grading and the proposed plan it was determined that the 0.9 acres in the development plan would have no impact on raising the level of the creek. This is not surprising because it is only one acre out of 883 acres. Our report agreed with their findings. The applicant then submitted a grade plan and showed grades above the flood line that FEMA came up with and were given a conditional letter of map revision. It is conditional until they actually do it and prove that they did what they said what they were going to do. The map is a FEMA map and the letter says that they are not in the flood zone. That is very broadly where we got to today. Mr. Bierut noted that anything new has to be above the line that FEMA gave; any structure has to sit above the line. If they want to put a basement in that is another step, because that would be below the flood line. Mr. Bierut stated he has no idea if they plan on putting in a basement in any of the houses. What we are looking at basically is a grading plan with some squares on it that are potential houses.

Mr. Bierut stated that he is open to any questions.

Ms. Maier stated that she will call for questions from the committee first, and then take questions from the audience. At the last meeting there was a question that came about placing fill on the site and the creek can become flashing when there is a rain storm, how you keep it from scouring, and would there be a requirement for a retaining wall.

Mr. Bierut stated that there would not be a requirement for a retaining wall. A retaining wall would place the development within the riparian setback and would also change the flow characteristics of the stream. The stream flows downhill and a retaining wall would make it go faster downstream creating flooding downstream. In this case they would have to place fill in a professional manner, make sure it is compacted properly, and protect it without a retaining wall.

Ms. Maier asked the process for reviewing the work to make sure that everything was compacted properly and the grading was per plan. What is the process at that point in terms of approving it?

Mr. Bierut stated that the applicant has to send a drawing stamped by a surveyor to FEMA showing their elevation and saying here is what we said we were going to do and here is what we did. They would clear the land and start the filling process and the city would make sure they weren't having erosion protection problems. Usually the biggest problem on any construction site is the erosion that enters the stream and the sewer. The Cuyahoga County Soil and Water District would monitor the construction. When they were done, the City would do an "As Built" and they would submit the "As Built" to FEMA for approval.

Ms. DeGeorge asked if that is how the builder shows that his steps would avoid creek impact.

Mr. Bierut stated that it is how the builder would show that his steps would avoid creek impact and it is basically the route they have to take for FEMA to be allowed to fill in that type of area. It is pretty deliberate.

Ms. DeGeorge stated that she was talking to Chairwoman Maier about how FEMA recently redid their floodplain maps, because she had read that about three or four years ago the Department of Homeland Security had found that 58% of FEMA's maps were inaccurate and outdated. Ms. DeGeorge asked how this is factored into these decisions, or do we just have to accept it for what it is.

Mr. Bierut stated that in the big picture we take it as it is. Mr. Bierut stated that he is not surprised by that amount. He noted he is sure Council members are familiar with the Ashton Road project where the hydraulics did not match FEMA's hydraulics. When going back to look at it, FEMA's hydraulics were not correct. The revised hydraulics were very close.

Ms. DeGeorge stated that in terms of any engineering studies or any particular engineering body, every project has a margin of error. She asked what we perceive the margin of error for this project to be.

Mr. Bierut stated that he does not know if he could say it is within ten percent, but what he can say is that the study that Hydrosphere did that reviewed the elevation was .02 (less than one inch) different than what is out there today. That is well within the boundaries of whether it is good to have, especially in that large of an area.

Mr. Bierut stated that it is such a huge drainage area. Drainage wise, stream wise, it doesn't have that much of an impact.

Ms. DeGeorge asked if there are ever any questions about how often the surrounding homes have flooding issues, or is that not part of the process of what is looked at.

Mr. Bierut stated that it is not part of the process.

Ms. Maier stated that the requirement is that they have to control the water that comes from their lot. They are not responsible for the other lots.

Mr. Bierut stated that Ms. Maier is correct. If you inherit natural flow on your property you can't damn it up.

Ms. Maier stated that there were other questions about the loss of trees and how that factors in in terms of water flowing through the site.

Mr. Bierut stated that the site has two houses on it right now. Obviously there will be less trees than there are now. Hydraulically, they looked at the calculations with ground covering. It is basically the same street cover with hydraulic calculations. Certainly the hard surface will add flow, but that flow is a small amount over the entire flow that is coming through Tuttle Creek.

Mr. Winzig asked if there is anything on the engineering drawings that the committee should be cognizant about. There are a lot of arrows and indications of current conditions and projected conditions. Is there anything that the committee should know; the big question was the impact and if it is an 800 acre drainage systems that we are talking about less than one acre, logic would

tell you it is probably not going to be that impactful? Is there anything else of concern?

Mr. Bierut stated that there might be some comments on the drawing but those are basic engineering comments. If somebody wanted to build something on Dover Center Road,, i.e., a bridal shop, that would have a different impact on Dover Center Road than a Walmart.

Ms. Maier called for any questions from the Zoom audience.

There were no questions from the Zoom audience.

Ms. Maier called for questions from the audience.

Charlie Post, 564 Forestview, stated that he understands the 800 acres and the one acre compared to that, but that one acre right there by the creek is going to have a lot more impact. It may not have an impact widely, but it is likely to have an impact on the nearby neighbors. He asked Mr. Bierut to talk about that.

Mr. Bierut stated that it is more important on how the site is graded in relation to Mr. Post's home and the other homes, to make sure that the water was indeed making it to Tuttle Creek and not on the property. That would be more of a concern. The water coming off that property to Tuttle Creek, either upstream or downstream to the home but in terms of making sure the water gets off that property in a way that doesn't affect the immediate neighbors.

Mr. Post stated that it would not affect them, but somebody is right near there that has a wall and he says the wall is often breached already.

Mr. Bierut stated that he not sure the home is causing the water to breach the wall. The property would not have an impact on the water breaching the wall; it is already happening.

Ms. DeGeorge asked Mr. Bierut if an Environmental Engineer would be involved. He would have the impact over moving the types of species and organisms that are there in that wooded area. What kind of impact is that going to have?

Mr. Bierut stated that he is not an Environmental Engineer, but we want to make sure no wetlands are being impacted. We want to make sure that dead trees being cleared our being cleared in accordance with federal guidelines. Mr. Bierut stated he is not a wetland scientist, but that would be a question through the process. If someone had property that was 100% wetland they could still split a lot or consolidate a lot.

Ms. DeGeorge stated that even if it is not considered wetland, just the fact that we do have certain species and the impact of moving them from the area and getting more impervious surface and homes, sunlight and shade and all those things, are those things are taken into consideration when looking at a lot split?

Mr. Bierut stated that the only thing he can think of that might apply is the Indiana Bat, which even at that they do tree removal only in certain months to let the Indiana Bat find another home.

Mr. Jules Rewald, 554 Forestview Road, stated that he lives right next to where the developer plans to build an 8000 square foot home uphill from him. He stated that water rolls down hill and right now that is a lawn. When that 8,000 square foot home is built uphill from him, the water that used to soak into that land is going to run downhill and up against his foundation. Ordinance 1120.1 says that houses are not supposed to be built that are going to be detrimental to the surrounding property holders. Mr. Rewald stated that if there is a problem he is going to have to live with it.

Mr. Bierut stated that he is not the developer or the builder, nor does he own the property. He is the City Engineer who reviewed the plans. Mr. Bierut stated that he does not think the home is 8000 square foot. If the applicant gets through this process and chooses to go forward, he will have to submit plans to the Building Department for whatever home he wants to build. It is incumbent on them to show they will not be throwing water at Mr. Rewald's home. They will have to catch it in a swale on the side of the house or pipe it directly to Tuttle Creek. That is why individual homes have individual lot topography plans.

Mr. Rewald stated that behind the house that already exists the trees will have to be cut down and the code requires a turn around that is 100 feet in diameter. There is no room to put a 100 foot turn around on the property. Why would the City allow a house to be built back there on a cul-de-sac that doesn't meet the requirements of the City?

Ms. Maier stated that they talked quite a bit in the Planning Commission meetings about the turn around that was going in. The code does talk about a cul-de-sac. It is going to be the permanent solution for the roadway. There are enough questions to the City as far as following the code as it should be in setting the cul-de-sac for the turn around. It was intended for those homes in those developments to have the street pushing through eventually. That is what the Master Plan shows. That is why it was always a temporary measure. That is why going through and reviewing things the turn-around is an improvement over the existing condition where it just stops without a way for emergency vehicles to go through. This actually does represent an improvement to the existing situation and it is based on the fact that the cul-de-sac is there until there is a final solution with the thoroughfare plan.

Mr. Rewald stated that there is very little greenspace left in this community, and asked if there has to be a house built on every inch of property in Bay Village. Are we that desperate for revenue?

Councilman Kelly stated that he does not think that is a fair statement. He noted that he is also a lawyer in his day job. He understands fully the concerns that have been expressed. He has heard from many of the neighbors, lives in the ward, and has met Mr. Rewald in the past. The applicant is the developer. The question of whether or not he can go forward is subject to a lot of rules that a lot of people aren't particularly excited about, Mr. Kelly noted, himself included. The process appears on its face to favor development as opposed to the concerns that have been raised by all. Mr. Kelly was going to ask Mr. Bierut about the limits of the study, the questions of what the impacts are with all of the various choke foots on Tuttle Creek of which everyone is aware, both south of Bayfair, south of Wolf Road, and behind Conover Circle. Mr. Kelly stated

that he will forego that because it is not going to get to the point he is trying to get at. He has spoken with his colleagues and the administration and has deep reservations about this for all the reasons the residents have described, both the tree canopy, the impervious surface, the question of the impacts to the creek. Mr. Kelly stated that what he is struggling with is a head/heart question. When he looks at it through the lens he has as an attorney, he would not be honest with Mr. Rewald and the neighbors if he didn't say that unless something changes in terms of the dynamic in which this application is being approached that ultimately it will be built as proposed, whether that is by virtue of Council approval as it currently exists or whether Council disapproves it and goes through a rather contentious period of litigation. Mr. Kelly stated that is not his desire. It has caused him to reflect on the circumstances and try to come up with something positive, something he can say to Mr. Rewald and to his colleagues on City Council that will afford a different way of looking at the problem.

Mr. Kelly stated further that his review of the application and the process required, and the limits of our ability to do something suggests we should approve the application as it relates to dividing into the three sublots. Sublot 1 presently represents a grass field. Mr. Kelly does not think that a rationale as it relates to storm water management can be appropriately articulated, tree canopy resolution, or other matters that might afford the ability to preserve Sublot 1 in some fashion. Sublot 2 as proposed already contains a home. That leaves Sublot 3, which at this point is adjacent to the creek, has stormwater management concerns, and has tree canopy concerns, and nature preservation which we say that we value and we all recognize that natural stormwater management does a better job than any man-made improvement. Mr. Kelly proposes that simultaneously with making an approval for this application that we direct Mr. Barbour to prepare legislation to take Sublot 3 by Eminent Domain, and that it is done for those reasons articulated by everyone with regard to storm water management, canopy reservation, and pervious surface. It is a compromise, it is not in keeping the requests and concerns of the entire community, but it does afford an ability to address a number of the concerns raised. It turns the problem on its side and affords City Council the ability to change the field of conversation. If the field of conversation remains 1109.03 final plat, then we are behind in the game, we have a limit sphere that we can expect to prevail on and even if we were to prevail there still is going to be the issue that would still involve compensation flowing to the landowner in addition to whatever damages came up. And still the possibility that even after all of that we don't preserve that parcel. Mr. Kelly stated that he personally knows the impact of that uncertainty when living by the creek in terms of heavy rain events. What are we supposed to do when there is a new 4000 square foot farm house, as currently advertised, on that parcel and there is a microburst? What is the impact to the people on Conover Circle and the fact that their backyards are falling into the creek. He is proposing that we devote taxpayer funds so that a parcel can be held without an intention to develop. There is precedence for that, if not in Bay Village, in other communities. As a result of climate change it is something that may come up from time to time. Mr. Kelly asked consideration for his thoughts.

Robert Petkash, 574 Red Oak Lane, stated that Mr. Kelly has an interesting proposal. He asked what access would be made for the existing house since it is being constructed to face a non-existing street.

Mr. Kelly stated that he would assume that the street would be extended. That is not Sublot 3;

that is the right-of-way. His understanding is that the plan would call for additional man-made storm water retention and those improvements might not be necessary if Sublot 3 were not to be developed.

Ms. Maier stated that before we go down this road she would like to voice her opinion that Eminent Domain is a nuclear option. It is the nuclear option for a lot of reasons, and we need to be very thoughtful and do a very thorough analysis before that consideration. The zoning code must be followed. If you look at a map of this area you can draw in the lines of where the development was planned; that is a strong basis to go against. Ms. Maier stated that she would love to preserve this area and we should never have built to the edge of creeks in the first place. That is why we have so much flooding in northeast Ohio. Ms. Maier stated that she does not know if she would be in favor of going down the road of Eminent Domain because she does not think it can be proven that this is an uninhabitable lot or there are no other conditions that could alleviate the concerns or the potential negative impacts.

Ms. Maier asked if there are any other comments.

Mr. Tadych stated that most of the homes on Forestview use the sewer lines that go down Forestview Road. There is one home, Sublot 2 that is a front yard to that house right now. You cannot classify it as a field. That front home may have its sewers go to Forestview. If, indeed, those sewers go to Forestview, and if, indeed, that lot is split and the first house on Lot 1 now has sewers from another house going through it, it confuses the issue and if there is a blockage in Sublot 2 and it is in Sublot 1's home that he is living in there could be a problem.

Ms. Maier stated that there would be an easement that would grant rights to be able to access.

Mr. Bierut stated they would never put two homes into one line.

Mr. Tadych stated that you would assume then that Sublot 2 might go to the sewer on Red Oak. Mr. Tadych would ask the Building Department if the builder has any intention of veering off this.

The first house then in Sublot 1 will probably drain sewer lines to Forestview, if indeed, the house on Sublot 2 drains into Forestview. The reason he is bringing this up is because there was a situation on Lake Road where a line was in somebody's back yard and caused quite a bit of consternation at that time. Mr. Tadych stated he would be very cautious about what is going on underneath the house although he doesn't agree with the subplot change. You have to consider the sewers.

JoAnn Post, 564 Forestview, stated that she has seen the lines and they do go around the driveway of the driveway of Sublot 1 out to Forestview. She saw them when the house was being rebuilt.

Ms. Maier asked Mr. Tuck-Macalla to address the point about easements.

Mr. Tuck-Macalla stated that an easement for any sewer line would be a ten foot swath that could not be built on. It will show on the topo. Some of the old easements behind some of the

houses on Lake Road, even though they are not being used, are shown and no one is allowed to build over the top of them.

Mr. Tadych stated that his question would be the house that is on Sublot 2 now. Would it then have its lines off to one side of the lot or would it come down the middle of the lot?

Mr. Tuck-Macalla stated that the lines are proposed to go back to the new street. The Sublot 2 lot is going to change its lines to the new street. The new street drain water drains into the creek, so they would be getting more water.

Michael Greco, Ward 3 Councilman, 29501 Osborn, asked who will be building the road extension.

Ms. Maier stated that the developer will build the road extension.

Mr. Greco asked who will be building the sewer and wastewater and stormwater retention.

Ms. Maier stated that the developer will have to build to the standards provided by the City.

Mr. Greco asked who will be responsible for the maintenance of them, cleaning them out, general maintenance and checking on them.

Ms. Maier stated that it will be the City's responsibility up to the connection to the street; the same as any other house.

Mr. Tuck-Macalla stated that there will be two manholes for cleaning so that will flush it out from the high point which will be the end of the new road, 80 feet back south.

Mr. Greco asked if the contractor will have any responsibility for the road.

Mr. Tuck-Macalla stated that the extension of the road goes to the City.

Mr. Greco asked if anyone did a valuation specimen of the houses at each dead end parcel of Red Oak assuming the housing values will be affected now that it will be a throughway instead of a dead end.

Mr. Bierut stated that it will still be a dead end. He is not aware of any valuation of the homes. There were no further questions from the live audience or zoom.

Ms. Maier stated that the task at hand is whether the committee wants to recommend for approval the lot split as proposed, deny, or recommend with corrections or modifications, and asked if the members of the committee feel they are prepared to make a decision tonight in terms of the recommendation.

Ms. Maier, Ms. DeGeorge and Mr. Winzig all responded affirmatively.

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Ms. Maier called the question of the committee's feelings about recommending the proposed lot subdivision.

Mr. Winzig stated that he would recommend it go forward as presented to Council for a vote.

Ms. DeGeorge would not recommend it go forward.

Ms. Maier stated that she would recommend it go forward to the full Council for action.

Ms. Maier stated that two of the three committee members have recommended it go forward to Council for action.

Ms. Maier stated that concludes the business on the agenda for this evening. She stated that this is a highly polarized issue and she appreciates the time and effort put forth. Ms. Maier thanked everyone for coming out this evening.

Sara Byrnes Maier, Chair

Joan Kemper, Clerk of Council