

# City of Bay Village

Minutes of Public Meeting  
Shoreline Special Improvement District

August 2, 2021  
6:00 p.m.

Present: Mayor Koomar, Law Director Barbour, President of Council Clark, Ward 1 Councilman Tadych, Ward 4 Councilman Winzig, Ward 2 Councilwoman DeGeorge.

Also Present: Kevin Butler, Esq., McDonald Hopkins Law Firm.

## AUDIENCE

Greg Baeppler, Monica and Gene Barry, Ed Smith, Barbara and Richard Bash, James Strunk, Matt Willmitch, Andy Seger, Christopher Day, Stephen & Andrea Sejba, Chuck Rotuno, Madison MacArthur, Carolyn Young, Tom and Susan Cucuzza, Mike and Marin Bloomfield, Rick and Donna Fragnoli, Ted Ward, Jeff Foster.

Mayor Koomar called the public meeting to order at 6 p.m., welcoming all to this informational session in regard to the proposed Shoreline Special Improvement District. (S.S.I.D.) The Mayor stated that the City has taken some steps toward creating a lakefront S.S.I.D. that would encompass all of the shoreline in Bay Village. The law firm of McDonald Hopkins has been hired to lead the City through the process. Mr. Ed Smith of Cliff Drive has taken a strong interest in moving the project along from a resident's standpoint.

The meeting tonight is to provide information as well as a question and answer session for educational purposes on the S.S.I.D. process.

Law Director Barbour introduced Mr. Kevin Butler, Esq. of McDonald Hopkins who gave the following presentation:

<https://oh-bayvillage.civicplus.com/DocumentCenter/View/3203/Bay-Village-Shoreline-Special-Improvement-District-Presentation-080221>

Question and Answers:

Q: In terms of timing, what are you seeing?

Mr. Butler: The statute was just created in 2019. Lake County started with a firm in 2020 and they now have their board formed. All communities are under the S.S.I.D. We are ready to introduce legislation to Bay Village Council and petitions to the residents. The Mayor wisely decided to go out to the community and ask for additional interested parties. It likely makes sense to join this first tranche, get in now, get the financing going, and create those economies of scale and get your projects underway. All of that can happen – from start to finish that petition through the final steps of the project – we could probably get done in six months.

Q: What is the typical cost for a 100 foot frontage for erosion control?

Mr. Smith: I would guess that it would run between \$70,000 and more for 100 feet. Our projects are 50 feet and they are running between \$70,000 and \$100,000. It really depends on the contour of the land. Chris Day is with KS Engineering and that is the company that is doing our engineering for the Board – surveying, permitting, etc. We have seen costs in that range. Costs are higher now because there is a lot of demand on materials and contractors. This will probably continue for a while.

Mr. Butler stated that in regard to financing, right now the best deals can be had at 15 years. They can go to 30, according to statute, but banks are not all that interested in 30 years.

Q: When you are selling your home, a buyer can basically see how much you owe for erosion control. Can that become a negotiating point for the sale?

Mr. Butler: That is correct; you can pull up your own property tax record on line right now and you might see a blank line item for special assessment. That is where it would be recorded.

Q: For building permits in Bay Village, you have to post an intent to build sign and your neighbors can appeal. Is there anything like that with the lake front erosion improvement projects?

Mr. Butler stated that he does not know the City's process for the lakefront erosion control projects, but there is regulatory involvement in shoreline work. The Army Corp of Engineers and the Ohio Department of Natural Resources come into play.

Mr. Smith stated that work must be done with the City to obtain a Submerged Land Lease. Most of the work is being done in the water, which is not the City's territory. Mr. Clark noted that the City Council does anywhere from 15 to 20 Submerged Land Leases in a given year. The City does not have a stake in that property.

Q: So, if you go 35 feet out into the lake that doesn't increase your property line by 35 feet? The property line is actually based on the original property line in 1855 which would be much farther out into the lake.

An audience member answered that the Ohio Department of Natural Resources (ODNR) will have a final say in how far you can go out into the lake. There are some emergency, temporary shore permits that have been given out the last couple of years where you can submit a drawing to the ODNR and get an emergency permit to start construction.

Mr. Butler stated that there is so much interest now in the lake shore the Ohio Department of Natural Resources is committed to trying to speed up the process. They are genuinely committed to try to speed things up.

Q: Does the City provide any kind of initial risk assessment or erosion risk assessment for a homeowner? Is there anything like that available, or can anybody recommend an initial assessment that you would do as a homeowner?

Mr. Butler stated that this is something an engineering firm would do. There is a representative here from an engineering firm.

Q: The timing of joining the S.S.I.D. – do you have to join at the time it is formed, or can others join later?

Mr. Butler: We fully anticipate that the S.S.I.D. is going to be made up of a fairly finite number of residents to begin with, and then more properties will be added to it.

Q: Relative to engineering costs and financing costs, is there some administrative overhead cost of running the S.S.I.D. that would be different if you just contracted individually?

Mr. Butler: There is some legal costs associated with the financing as there would be with any debt financing. There is engineering, if the S.S.I.D. board would want to have an engineer engaged through the S.S.I.D. board.

Q: Will it be a year or two years when the final assessments are done?

Mr. Butler: It depends on the approvals from the state.

Mr. Smith: We have been working on engineering with KS Engineering and they are about to start permitting. That is at the very initial stage. Chris Day has recently given us a project completion estimate of December, 2022, about a year and a half from now. That is going through financing, permitting, and having all the stone in place and the finished project. This is a guestimate, because you don't know what is going to happen with the weather off shore. Our project includes a park and nine adjacent homeowners. We are working a deal with the park to provide an on-shore access for the material to be brought in by barge.

Law Director Barbour noted that Mr. Ed Smith lives on the eastern half of the shore and is the president of the Beach Association at Cliff Drive along with nine adjacent homeowners of which he is one. Mr. Smith brought this proposal to the City and his group is the initial group to get the S.S.I.D. started. We already have homeowners and property owners that are going to proceed with the S.S.I.D. Their engineering company is KS Associates.

Mr. Chris Day of KS Associates stated that a cost per foot really depends on the particulars of the shoreline. Is usually about \$1200 to \$1500 per foot. The prices now are more like \$1600 to \$2100 per foot. A lot of it depends on what the plot looks like. With permitting, some situations take longer to permit. The Ohio Environmental Protection Agency is the third permit that is needed, depending on how much rock is

needed for the water. There are a lot of particulars that are very site specific and you don't really know that until an engineering firm is hired to really dig in and look at the available data, or just go out and get a surveyor to actually survey what it really looks like.

Q: The homeowners can move forward on their own to contract an engineer and even higher their own contractors and proceed with the project, and still partition to be part of the S.S.I.D.?

Mr. Butler stated this is correct.

Q: In that case, you mentioned that part of it may be financed through the S.S.I.D. if you are doing more than erosion control. Who decides that?

Mr. Butler stated that lawyers decide that because they want to ensure that the financing remains. A finance lawyer would have to decide if a project qualifies.

Q: When would that happen?

Mr. Butler stated that would happen between the initial petition and the final petition when the plans are in place.

Q: In regard to the Eagle Cliff property on the west side of the City, how would that work for the steps down to lake access?

Mr. Butler stated that steps down can be incorporated into an erosion control project.

Q: How would this work for the properties across the street that have access to the steps?

Mr. Barbour stated that is a totally separate issue as to who actually are the Eagle Cliff Allotment participants and that is not one that is going to be solved by the City. That is one that is going to be solved by those property owners themselves, either by cooperative means or action to acquire title or some other kind of lawsuit. The City is not going to be involved in any of those determinations or ownership of property.

The question is who are the owners and who has the rights. The City is not going to sign for ownership rights; those will have to be decided by legal action or court determined. It is not within the City's ability to do that. The property would be eligible. The question is who are the rightful owners and the rightful users. It is possible that someone has a right to use but doesn't have the ownership interest because of the time that was created in 1885. The property itself would be eligible to be part of the S.S.I.D. The question to be solved is who are the property owners. It is the owners that would have the right to make that decision and sign the petition.

Mr. Smith stated that they are a little different. They had the land for the park deeded to them saying that it was available for all residents of Bay View Park Association, 150

parcels. Only 25% of the parcels ever participated in the activities or funding of the park. They went through a process guided by a law firm of saying to all 150, “you are either going to opt in and be a part of our project going forward or opt out and we will never bother you again but you have no rights – you have a right to come back in and pay a penalty in the future.” They ended up with about 40 people saying they will commit to the park. Those 40 people and their parcels have been registered with the county recorder so their deed will show they have a right to the park and have a commitment to financing. The other 110 do not have any rights. They can come to the association and say they would like to rejoin and pay the penalty.

An audience member asked Mr. Smith questions relating to the beginning of their association.

Mr. Smith stated that their association was fairly weak. They had a defined subdivision, and two parcels that vaguely said these parcels are being given to the park to provide lakefront access and beach access for the subdivision, but it didn’t list the parcels. They have gone through the process of identifying those parcels. The homeowners have rewritten the bylaws, extensive bylaws, defining the legal responsibilities. They made park laws, park rules, and changed the way the Board operated. They brought what was established in the early 1940’s up to 2020 and it took a lot of legal work to get it to that point. Then they went out to the owners and presented the new bylaws to try to become credit-worthy and move forward in improving the park. “Are you going to opt in or opt out?” Mr. Smith stated that they had no liability insurance when he stepped in. They were in a situation where they might have lost the park if someone had gotten injured. So, they locked up the park completely until they got insurance and then opened up the park without making the stairs available because they were in disrepair.

Mr. Barbour addressed the gentleman from the Eagle Cliff area and stated that if he did talk to a lawyer the lawyer would say that they need to collectively, or whoever is interested, go out and hire a title company. The lawyer would advise against proceeding until all ownership interests were squared away, which would start with a title search.

Mr. Butler noted that they anticipate presenting the City with the petition and plans soon, depending on how many more, as a result of the Mayor’s call to the community at large, would want to join.

Q: A question for Mr. Smith. On Oakcliff Dr. there are 22 homes that are in the association from the 1920’s. Did you have an easement on yours?

Mr. Smith stated that the park owns the land. There were rumors of an easement, but for the water company.

Q: There are other homes scattered about – if they opt out and we present them with new bylaws, how will that affect the deed on their property going forward, the twenty-two homes that are part of the association beyond just the homes on our street that are

scattered? Does it just disappear on their deed and the new owner in the future can't opt in?

Mr. Barbour stated that this would require a filing that would remove their right to that beachfront property.

Q: Councilwoman DeGeorge stated that she heard a resident mention doing a S.S.I.D. through the City. Can you speak again the separation of the City once the S.S.I.D. is formed?

Mr. Butler stated that one thing the government would want to avoid is making it appear that the City government is using its resources to benefit a small number of lakefront property owners. But, you do need an entity to contract as a client in order to get moving on these projects, and often times that client is the city government. The City has engaged McDonald Hopkins just until the non-profit board is up and running. At that point, the City can advance its bill to the non-profit board to pay. That expense can be part of the legal expense that is rolled into the financing. Unless the city government itself wants to pay the bill. There is no intention for the government to pay for your project. It is meant to be an assessment that benefits the individual property owners.

Ms. DeGeorge stated that it is her understanding that if there are any issues about the S.S.I.D. it doesn't come back to the City.

Mr. Butler stated that is correct. For the public purpose involved, the City does have representatives on the Board. Also, because we need to rely on the City for those pieces of legislation that ultimately result in the assessment being made we need the City's involvement.

Q: There is one S.S.I.D. board for the City that will oversee all projects?

Mr. Butler stated that this is correct unless for some reason the government wished them to create more than one.

Q: For the project we would take it to engineering and final design and then hand it off to the Board to administer bidding, etc.?

Mr. Butler stated that it would depend on how far along the project is. If a contractor is already engaged there would not be reliance on the S.S.I.D. Board to do any sort of special bidding out of the project. But, if a number of owners wanted to see if they could create economies of scale by hiring an engineering firm or a contractor to do the work, that may be an opportunity for the S.S.I.D. board to step in and actually let out the contract. It really depends on timing. The S.S.I.D. board is established immediately after the initial petition is approved by City Council. The articles are filed with the state, there is now a non-profit, and the board is ready to go.

The Mayor noted that membership on the board may evolve over time.

Q: How often is there financing?

Mr. Butler stated that financing would probably not be done more than once per year.

Q: Councilman Winzig asked who is responsible to contact the homeowners about the S.S.I.D. Should the City government be talking to them?

Mr. Butler stated that the City of Bay Village has done a magnificent job of communicating to property owners. It would make sense to let the property owners on the lake know of this opportunity, and the extension of the opportunity for properties accessing creeks. This extension was passed with the state budget bill on June 30, 2021.

Councilman Tadych asked if the opportunity for properties along the creeks would be the same S.S.I.D. as that for the property owners along the lake.

Mr. Butler stated that it would be the same S.S.I.D.

Q: Is this associated at all with the Cuyahoga Plan to pay for some of the property owners' erosion control in exchange for having access?

Mr. Butler stated that when the S.S.I.D. law was passed the Cuyahoga Plan was not on anyone's radar. The Cuyahoga Plan is to give the public more access to the water by way of easements. Cuyahoga County hasn't yet fully committed to paying for the entirety of the shore erosion. They are not certain they could afford this. This program is two ships passing in the night. They are on parallel tracks with the county. Property owners might not envision a bike path or walkway underneath their residents for the public to enjoy. Mr. Butler stated he personally struggles to see how the Cuyahoga Plan is going to gain a ton of steam. It would be such fits and starts it would not be worthwhile.

Q: In regard to inland erosion control, is there any thought on the creation of a culvert replacing an open creek as erosion control?

Mr. Butler stated that he does not know the answer to that question.

Mr. Smith suggested checking the presentation made about the Cuyahoga County Lakefront Access Plan about one week ago. It is informative. One of the questions that did come up was "should we continue with out pursuit of our S.S.I.D." and the answer was yes. Mr. Smith stated that their group has been in contact with the county and they would love their financial resources but want to make sure that what they do is consistent with what they have in mind.

Mr. Butler stated that the Cuyahoga County Lakefront Access Plan is a magnificent idea but there are issues with the execution.

Mr. Smith suggested to Mr. Butler that future presentations might show how the debt is paid through the assessment.

Q: Is it possible for the owner of a property to pay off the assessment in a lump sum?

Mr. Butler stated that the assessment could be paid in a lump sum.

Discussion followed concerning quantifying the economies of scale for projects. Engineer Christopher Day from KS Associates discussed the benefit of one set of plans and specifications.

Mr. Butler stated that he is available to all residents for questions at any time.

Mr. Clark noted that Council has already signaled its desire to support this S.S.I.D. plan.

The following information will be placed on the City of Bay Village website:

The City of Bay Village is moving forward with the establishment of a Shoreline Special Improvement District (SSID). This action is similar to undertakings by other cities and counties along the Ohio shoreline of Lake Erie. It allows property owners to develop a project funded by a special assessment on their properties. Shoreline SIDs are not grants or zero-interest loans. Property owners will pay for the project through assessments on their property.

A Special Improvement District is a non-profit established by lakefront property owners for the purpose of accessing lower cost, longer term financing to cover shoreline improvements including protective revetments designed to reduce shoreline erosion and lake-related damage to their properties. Participating in a SSID is voluntary and does not require that properties be contiguous or a relinquishment of any private property rights. The SSID provides access to lower cost financing (and repayment over time through your property tax billing), working with the known and experienced contractors offers the opportunity to see lower costs both during the near-term project and reduced long term maintenance costs through the quality services provided in the initial design and construction.

If you are interested in participating in the SSID, please complete this [Pre-Petition Information Form \(PDF\)](#) and return it to [Kevin Butler](#).

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President of Council

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Clerk of Council