

Public Hearing Materials

- **Letter from former Chairman Heintz of the Silver Lake Village Planning Commission dated February 11, 2020.**
- **Proposed legislation (Ordinance No.: 18-2020).**
- **Current codified (Section 1169).**
- **Emails from Chairman Stoiber of the Silver Lake Village Planning Commission regarding Waterfront and Riparian Setback References dated May 15, 2021, and from Mr. David Hunter, Esq. regarding Correspondence to SLV Council Members (and Other Village Leaders) RE: Riparian Setback Ordinance dated June 16, 2021.**
- **Letter from Chairman Stoiber to Council regarding Ord. 18-2020 Chapter 1169 Waterfront and Riparian Setback Development Standards dated June 21, 2021.**
- **Letter from former Chairman Heintz regarding Waterfront Setback Legislation dated June 18, 2021.**

To: Silver Lake Village Council
From: Silver Village Planning Commission
February 11, 2020

Re: Proposed changes to Codified Ordinances Chapter 1169,
Waterfront and Riparian Setback Development Standards

BACKGROUND

In early 2019, the Silver Lake Village Planning Commission took up an application from a new resident couple for approval of a demolition and reconstruction project at a lakefront property on Silverview Drive. In addition to the usual considerations arising under the zoning code (building footprint, building lines, architectural review, landscaping, impervious cover, etc.), consultants for the applicant brought to Planning Commission's attention the applicability of Chapter 1169 of the zoning code, entitled Riparian Setback and Development Standards. Enacted in 2007, Chapter 1169, among other things, creates buffer areas within the Village around lakes, streams and the Cuyahoga River. The purpose is to diminish the adverse effects of the surface water, storm water and pollution draining into these watercourses.¹ Chapter 1169 establishes unique rear yard building setback lines for properties that abut a watercourse. There is an initial fixed setback distance, which can increase based on the slope of the lot. Chapter 1169 applied to the Silverview property since it abuts Silver Lake.

It became apparent during Planning Commission's review that a literal application of Chapter 1169 would render the Silverview lot unbuildable because when the slope of that lot was factored into the setback calculation required by Section 1169.04(e), the resulting rear yard setback would extend significantly into the existing structure's footprint. Such an illogical result was never intended by the enactment of Chapter 1169. As a result, the property owners, their consultants, the Planning Commission, Village Solicitor Heydorn and the Board of Zoning Appeals created a combination of permissible uses, solicitor's opinions and variances so as to allow the application to proceed, and the project is under construction today.

This process was time consuming and cumbersome, and didn't address the risk that Chapter 1169 might have similar unintended consequences when applied to other applications. As a result, at the suggestion of Solicitor Heydorn and with the approval of Mayor Hovey and Village Council, Planning Commission undertook a review of Chapter 1169 to determine whether and how its provisions might be modified to make it workable as applied to residential development in the Village, while at the same time affirming its underlying zoning principles, *viz.* maintaining the features and values of the Village, and protecting its waterways, by diminishing the adverse effects of erosion and runoff.

¹ Silver Lake, in particular, has experienced algae blooms and other adverse consequences from stormwater and surface water, and associated pollutants such as fertilizers that drain into the lake. These have become more frequent over time.

THE REVIEW PROCESS

Planning Commission put this matter on its agenda in early 2019 and made it a regular discussion item. Notice of the Commission's efforts was given to residents, many of whom began attending Commission meetings on a regular basis. Initially, there was widespread misunderstanding that Planning Commission's intent was to impose an arbitrary and restrictive regulatory scheme which would interfere with lakefront residents' ability to enjoy their properties. After several meetings, there developed a general understanding among residents that the reverse was true: the objective was to make Chapter 1169 *less* restrictive rather than more. And, there was universal acceptance of the proposition that the health of the lakes, streams and river, benefits all residents.

By late spring, a draft of an amendment to Chapter 1169 was completed and circulated.² The draft was discussed throughout the summer and fall of 2019, at Planning Commission meetings and in a public work session in August. It was revised several times as a result of these discussions, to incorporate suggestions from various interest groups. The process was transparent and collaborative.

In November, 2019, a further revised draft was circulated and further public discussion took place at a Planning Commission meeting on December 10. Thereafter, additional revisions were made, and on January 13, 2020, a third revised draft was presented and described at the Planning Commission meeting. Copies were circulated to persons attending that meeting and were available to persons who did not. On January 27, 2020 Planning Commission held a meeting devoted solely to the proposed revised ordinance. Once again, all parties in interest had notice of the meeting, and attendance was robust. Comments and questions from residents were again solicited. There was a vigorous dialog among proponents of various points of view. At the end of the meeting, Mr. Stoiber made a motion to approve the latest draft of a proposed revised Chapter 1169 and transmit it to Village Council for consideration. That motion was unanimously. The proposed revised ordinance is attached.

PROPOSED NEW CHAPTER 1169

The proposed revised ordinance creates a Waterfront Setback for property abutting Silver Lake, Crystal Lake and the ponds on Silver Lake Country Club. The basic setback is 35 feet from the lakeshore. The setback increases to 70 feet when a healthy tree greater than 6 inches in diameter is sought to be removed. The proposed ordinance distinguishes between waterfront property situated in the Village's Park and Recreational Zoning District, and its Residential Zoning District. The proposed ordinance describes, for each zoning district, uses that are permissible within the Waterfront Setback, and uses for which prior approval from the Village much be obtained. In all cases, uses incidental to the daily life activities of residents are unaffected by the proposed ordinance. Accessory uses, and conditional uses, consistent with Chapter 1133 (which governs the Residential Use District) are provided for. As the process evolved, Solicitor Heydorn suggested that in the case of proposed uses beyond the allowed Main

² As the process evolved, an email list of interested parties was created which made it easier to distribute the proposed revised ordinance. Ultimately the list included many waterfront residents, the Board of Trustees of the Silver Lake Estates Trust and members of the Board of Directors of Crystal Lake Park.

Uses, site plan review be required. Planning Commission concurs with that recommendation, and proposed Section 1169.06 now provides for that. Finally and importantly, to the extent there exist lawful nonconforming uses in any of the use districts, they may continue.³

Separate from the Waterfront Setback, properties abutting the Cuyahoga River or a stream (whether running continuously or intermittently) are subject to a Riparian Setback. The application and calculation of the Riparian Setback are largely unchanged from the existing ordinance. This is because the provisions of Chapter 1169 are specifically designed to apply to properties which abut running waterways, as distinct from lakes. The rules for the Riparian Setback follow those promulgated by the Summit County Soil and Water Conservation District, which have been enacted by many communities in Summit County.

THE PROS AND CONS

As set forth above, all participants in the process leading up to the transmittal of this proposed revised ordinance enthusiastically recognize the need to preserve, protect and nurture the waterways within the Village, whether because of an interest in preserving the aesthetic beauty of the Village or to counter the increasingly severe environmental impact we experience today. At the same time, there is valid concern about undue regulatory infringement on the rights of owners to enjoy their property as they see fit. The Planning Commission believes that the proposed revisions to the existing law strike a reasonable balance between these considerations. There is not, however, universal agreement on that point, and several opposing theories have been advanced.

1. Disproportionality

It was said that the properties around Silver Lake and Crystal Lake make up a relatively small fraction of the watershed that drains into them, and as such it is unfair to regulate uses on lakefront properties, while leaving the remainder of the Village (and those parts of the watershed that are beyond its boundaries) unregulated. The Planning Commission believes, however, that simply because a portion (even a large portion) of the watershed might not be subject to Village oversight, it is irresponsible to do nothing when the adverse effects of runoff and erosion are increasingly obvious and severe. Lakefront properties are, in effect, the last line of defense.

2. Regulation of Private Property

Early on, it was suggested by the Estates Trustees that the property owned by the Silver Lake Estates Trust is “private property” and should not be subject to Village regulation.⁴ However, virtually all the property in the Village is privately owned, and it is axiomatic that government may regulate the use of private property provided that such regulations are not arbitrary and are reasonably related to a legitimate governmental interest, such as health, safety

³ This was the case under the current code, but the proposed revised ordinance provides for it expressly, to make clear to residents that lawful activities currently being engaged in by them will not be affected by the new law.

⁴ A similar argument was raised by a few residents who oppose government oversight generally.

or general welfare.⁵ Clearly the threat to the quality and sustainability of Village waterways posed by unchecked runoff, with accompanying erosion and pollution, falls within these interests. General welfare can also encompass the Village's interest in creating and maintaining an attractive, harmonious and aesthetically pleasing environment. In particular, the lakes in Silver Lake are iconic and add materially to the appearance and culture of the Village. Regulatory oversight of them is well within the scope of the Village's governmental authority.

A separate, but related notion is that regulation is unnecessary because behavior is best governed by mutual respect and consideration for others. Indeed, this is a basic tenet of Silver Lake's culture, one of its most significant attributes and in the experience of the Planning Commission, the rule rather than the exception. However, exceptions inevitably occur. Several times during 2019 there were instances of radical lot clearing (vegetation and tree removal) that highlighted the need for a system of regulation, and an associated means of prompt enforcement.

Regulation as an Unnecessary Interference

The Trust asserts it has proven itself to be a conscientious steward of Silver Lake undertaking many steps designed to preserve and protect Silver Lake, at considerable expense. It communicates regularly with trust beneficiaries and Village staff. It routinely undertakes activities that would, under the original draft of the proposed revised ordinance, require application to and a permit from the Village. Similarly, individual property owners contend they are responsible and considerate in the care of their waterfront back yards. The Trustees suggest that imposing a waterfront setback is an undue imposition on the operation of their business in the ordinary course. Property owners contend that the waterfront setback constricts their rights to enjoy their properties as they wish.

Indeed, members of the Estates' Board have been active participants in this revision process, making productive suggestions. They have worked closely with Village enforcement personnel in addressing the instances of unpermitted lot-clearing described above. It is clear that the current Board of Trustees has undertaken proactive and thoughtful steps, at significant expense, to preserve and enhance the lake and the shoreline.⁶ Similarly, property owners are in the main, considerate and responsible in the maintenance of their properties.

But simply exempting property from the operation of a waterfront setback ordinance based on the current practices of the Trustees, while imposing regulation on other, substantially identical property, is impractical, and legally suspect. Moreover, the Trust (or any individual, for that matter) has limited ability to respond quickly and effectively to thwart actions detrimental to a waterway. Most of the instances in 2019 when lakefront property was radically cleared occurred at least in part on Trust property. The Trust steadfastly opposes this kind of depredation, both because it creates unsightly conditions and it has a detrimental effect on the Silver Lake ecosystem. To the extent they occurred on Trust property, these acts constituted a

⁵ Indeed, this is fundamental to all manner of government regulation: peacekeeping, social services, building codes, public health laws, etc.

⁶ Planning Commission acknowledges the current state of affairs as a significant improvement from the not-so-distant past, when opposing groups of residents, and the Estates Trust, were mired in seemingly endless and expensive litigation, with no discernible benefit to anyone.

trespass, for which the Trustees could seek redress by filing a legal action. Rather than pursue that time-consuming and expensive remedy however, the Trust immediately sought and obtained intervention from Village enforcement officials. And in each instance, Village officials, under the authority of Village law, were able to work cooperatively with the Estates Trustees and the homeowner to bring about an agreeable resolution of the event.⁷ In the absence of regulations which the Village could enforce, it is likely that these offending activities would have continued unabated while the Trust's action for trespass languished in the courts.

Finally, there remains the Trust's concern that its everyday activities in operating Silver Lake Park might be unduly restricted if its property is included under the oversight of the proposed revised ordinance.⁸ However, all of the Trust property around Silver Lake, and all of the property around Crystal Lake, is in the Park and Recreational Use District, subject to Chapter 1135 of the Village Zoning Code. Chapter 1135 has been in effect since at least 1994. Presumably the uses permitted in Chapter 1135 are broad enough to encompass all of the activities routinely engaged in by the Trust and by the Crystal Lake Board,⁹ inasmuch as they have been engaging in those activities without interference from the Village for as long as anyone can remember. Incorporating into revised Chapter 1169 the broader range of uses permitted in the Park and Recreational Use District preserves that status quo, removing any reasonable objection that the Waterfront Setback will unduly interfere with the day-to-day operations of either Crystal or Silver lakes. If, however, either of them were to undertake a significantly different or expanded use, the proposed revised ordinance would apply. And common sense suggests that it should.

On the other hand, the residential properties around Silver Lake and Crystal Lake are in the residential Use District, governed by Chapter 1133. The proposed revised ordinance also recognizes the property rights enjoyed by lakefront residents. Generally speaking, all daily life activities currently engaged in by shoreline residents may be continued. Lawns and landscaping may be maintained and trees less than six inches in diameter at breast height may be removed.¹⁰ New activities, such as the installation of hardscape or lawn area where there currently is none, or the removal of trees more than six inches in diameter at breast height, may be permitted under the proposed revised ordinance, as conditional uses. Planning Commission believes that as it relates to residential property, the proposed revised ordinance strikes a balance between respect for and preservation of private property rights and the overarching interest of the Village in

⁷ Ironically, it was existing Chapter 1169, with all of the shortcomings the revised proposed ordinance seeks to resolve, that supported the quick cessation of these activities.

⁸ Crystal Lake Park could also make this point (but did not).

⁹ These include (among others) beach replenishment, parking lot maintenance, installation of the aeration system and the rain garden in Silver Lake, using the seaweed harvester in Crystal Lake, etc.

¹⁰ One final word as it relates to tree removal. The proposed revised ordinance creates an approval process when a healthy tree greater than 6 inches in diameter is sought to be removed from the Waterfront Setback area. Currently there is no such restriction. Recent experience with wholesale tree removal on properties abutting Silver Lake demonstrates the aesthetic detriment that occurs when a lakefront back yard is cleared. In addition, members of the Village Shade Tree Commission pointed out that there is a heightened need for protection of the tree canopy the closer one gets to a lake. The Commission believes these considerations warrant inclusion in revised Chapter 1169 of the relatively modest conditions on removal of healthy trees in the Waterfront Setback area. As the dialog unfolded, however, some residents expressed the view that any restriction on one's "right" to remove a healthy tree is unacceptable. Other residents took the view that the restriction should be broader and apply Village-wide. That consideration is beyond the scope of the Planning Commission's undertaking with respect to Chapter 1169.

maintaining its character and culture, and reasonable regulation of activities that could be injurious to the lakes.

Equal Application

Many arguments advanced by the Estates Trust were in support of the proposition that its property should be excluded from the application of the proposed revised ordinance. As set forth above, there are arguments to the contrary that Planning Commission finds more compelling. In addition, there is a significant practical problem associated with an exemption for Trust property. The property owned by the Estates Trust only extends about three-quarters of the way around the Silver Lake shoreline. Even there the Estates' property hugs the shoreline and only extends moderately into the abutting back yards of property owned by others. The rest of the property abutting Silver Lake is not in Silver Lake Estates at all. Omitting Trust property from regulation while subjecting the remaining (and virtually identical) lakefront property to it would deprive the latter of equal protection under the law, and is therefore legally suspect. And thus unwise.

CONCLUSION

As described above, this process was long, but at the end of the day, the Planning Commission unanimously believes proposed revised Chapter 1169 is a significant improvement on existing law. It diminishes the current burden imposed on waterfront property and prevents unintended and illogical results from the application of existing law. At the same time, it appropriately recognizes the Village's interest in preserving and enhancing its precious watercourse assets. One other takeaway: there is merit to the notion that the great majority of runoff volume originates far beyond the borders of the two lakes. As mentioned above, that's no reason to do nothing. But Silver Lake in particular has, for decades, been the collector of much of the stormwater originating from the north and east, well into Stow. The Village needs to be proactive about this problem, specifically by doing what it can, as with proposed revised Chapter 1169. But the size of the watershed does highlight that the proposed ordinance is only one of several tools that should be employed to address the threats to our lakes and streams. Planning Commission heard ideas from various groups (the Shade Tree Commission, the Watershed Committee, the Estates Trustees, others) for remediation projects away from the lakes that seem practical, workable and cost-effective. The rain garden constructed at the Silver Lake fishing dock is an example, and there has been talk of other, similar retention and absorption systems that could be incorporated as the Village storm sewer infrastructure is repaired and replaced. While Planning Commission unanimously recommends adoption of the revisions to Chapter 1169, these parallel solutions should be explored.

Respectfully Submitted,

Silver Lake Village Planning Commission
Jeffrey T. Heintz, Chairman

cc: Mayor Bernie Hovey; Solicitor Robert Heydorn, Planning Commission Members;
Suzanne Lipan

ORDINANCE NO.: 18-2020

VILLAGE OF SILVER LAKE
INTRODUCED BY: The Administration

AN ORDINANCE ENACTING CHAPTER 1169 OF THE ZONING CODE OF THE VILLAGE OF SILVER LAKE, OHIO, ENTITLED “WATERFRONT AND RIPARIAN SETBACK DEVELOPMENT STANDARDS” AND REPEALING THE EXISTING CHAPTER 1169, ENTITLED “RIPARIAN SETBACK DEVELOPMENT STANDARDS”.

WHEREAS, the Planning Commission unanimously recommends that the existing Chapter 1169 be entirely replaced by the Chapter 1169, entitled “Waterfront and Riparian Setback Development Standards”, as such new chapter appears attached hereto, and which is incorporated herein, in the version produced by the Planning Commission.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Silver Lake, County of Summit, State of Ohio, that;

Section 1: That a new Chapter 1169, entitled “Waterfront and Riparian Setback Development Standards”, as proposed by the Planning Commission, and which is attached hereto as Exhibit “A”, and incorporated herein, be, and the same is hereby enacted as Chapter 1169 of the Zoning Code of the Village of Silver Lake, Ohio.

Section 2: That the existing Chapter 1169, entitled “Riparian Setback Development Standards”, be, and the same is, hereby repealed.

Section 3: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 4: WHEREFORE, this Ordinance shall take effect and be in force at the earliest period allowed by law.

PASSED:

William M. Church, President of Council

APPROVED:

Bernie Hovey, Mayor

APPROVED AS TO FORM:

Robert W. Heydorn, Solicitor

ORDINANCE NO.: 18-2020

ATTEST:

Sean M. Housley, CPA
Clerk-Treasurer

Silver Lake, Ohio _____
I, hereby certify that Resolution or Ordinance
No. _____ was published by title or
in full in the local newspaper, or designated
by Council resolution on the date or dates of
_____.

Clerk of Council

Exhibit A

**CHAPTER 1169 WATERFRONT AND RIPARIAN
SETBACK DEVELOPMENT STANDARDS**

1169.01 PUBLIC PURPOSE.

- A. It is hereby determined that Crystal Lake, Silver Lake, the Cuyahoga River and the streams (whether flowing continuously or intermittently) within the Village of Silver Lake (hereinafter collectively referred to as “Watercourses”) contribute to the health, safety and general welfare of the residents of the Village;
- B. The purpose of these Waterfront and Riparian Setback Development Standards is to: (i) enhance the scenic beauty and the environment of the Village; (ii) enhance the quality of life of the residents of the Village; (iii) enhance the value of private property; (iv) diminish erosion, surface runoff and other pollution; (v) protect and preserve the quality of the Watercourses; and (vi) reduce the risk of property loss and damage because of flooding, erosion, runoff and other surface water impacts.
- C. These regulations shall control uses and development within the Waterfront Setback and the Riparian Setback (each hereinafter defined). Nothing in these regulations shall be construed to require any abandonment of a Lawful Nonconforming Waterfront or Riparian Use, hereinafter defined.

1169.02 COMPLIANCE AND VIOLATIONS.

- A. No permits or approvals described in Parts Eleven or Thirteen of these Codified Ordinances shall be issued by the Village unless the plans to which such permit relate comply with these regulations.
- B. These regulations may be enforced by the Village as provided in these Codified Ordinances or by civil action by the Village. No private right of action is expressed in or may be inferred from these regulations.

1169.03 DEFINITIONS.

- A. **DAMAGED OR DISEASED TREES:** Trees that have split trunk, broken tops, heart rot, insect or fungus problems that will lead to imminent death, undercut root systems that put the tree in imminent danger of falling, lean as a result of root failure that puts the tree in imminent danger of falling, or any other condition that puts the tree in imminent danger of being uprooted or falling into or along a stream or onto a structure.
- B. **100-YEAR FLOODPLAIN:** Any land within the 100 year floodplain as defined by the Federal Emergency Management Agency or its successor, and approved by the County of Summit Department of Building Standards.
- C. **LAWFUL NONCONFORMING WATERFRONT OR RIPARIAN USE:** a use, including without limitation uses arising under an easement or right of way (whether by grant or prescription), structure or impervious cover within the Waterfront Setback or

- the Riparian Setback, not in conformity with this Chapter but otherwise lawfully existing or being conducted on a Lot on the effective date hereof.
- D. WATERFRONT SETBACK: A buffer area beginning at the customary historic shoreline of either Crystal Lake or Silver Lake or the ponds on Silver Lake Country Club and extending landward away from the lake or pond as follows:
- a. Thirty Five Feet (35') with respect to all uses except the removal of trees; and
 - b. Seventy (70) feet with respect to removal of trees.
- E. RIPARIAN SETBACK: A buffer (measured as hereinafter set forth) beginning at the ordinary high water mark on each side of a Watercourse or, in the case of an intermittent Watercourse, from the centerline thereof (and for further certainty excluding Silver Lake and Crystal Lake and the ponds on Silver Lake Country Club) and extending landward away from such Watercourse as set forth below, *provided however* in the event: (i) plans for a residence to replace a pre-existing residence are submitted for approval pursuant to this Title; (ii) the plans for the replacement residence are reasonably compatible with the surrounding neighborhood; (giving effect to any approved Conditional Use and/or variances unrelated to the Riparian Setback) and (iii) approval would be prohibited solely on account of application of the Riparian Setback as calculated pursuant to this Section 1169.03 the applicant, the Planning Commission and/or the Board of Zoning Appeals shall attempt to agree upon reasonable accommodating conditional uses or variances, as the case may be, from the Riparian Setback requirements so as to permit the project to go forward without prejudice to the applicant's appeal rights in the .. event such conditional uses and/or variances cannot be agreed upon.

Subject to the foregoing, the Riparian Setback shall be calculated as follows:

- a. A minimum of 300 feet on each side of all Watercourses draining an area greater than 300 square miles.
- b. A minimum of 100 feet on each side of all Watercourses draining an area greater than 20 square miles and up to 300 square miles.
- c. A minimum of 75 feet on each side of all Watercourses draining an area greater than 0.5 square mile (320 acres) and up to 20 square miles.
- d. A minimum of 50 feet on each side of all Watercourses draining an area greater than 0.05square mile (32 acres) and up to 0.5 square mile (320 acres).
- e. A minimum of 30 feet on each side of all Watercourses draining an area less than 0.05 square mile (32 acres).

Because the gradient of a lot to which the Riparian Setback applies significantly influences impacts on the stream, the calculation of the Riparian Setback as calculated in the preceding paragraph shall be subject to the following adjustment process, as applicable:

- a. If the slope of the Riparian Setback is greater than 15% but less than 20%, 25 feet shall be added to the Riparian Setback;
- b. If the slope of the Riparian Setback is greater than 20% but less than 25% 50 feet shall be added to the Riparian Setback;

- c. If the slope of the Riparian Setback is greater than 25% 100 feet shall be added to the Riparian Setback.

Where the 100-year floodplain is wider than the Riparian Setback on either or both sides of the stream, the Riparian Setback shall be extended to the outer edge of the 100-year floodplain. The “100-year floodplain” shall be as defined by FEMA and approved by the County of Summit Department of Building Standards.

Where wetlands protected under federal or state law are identified within the Riparian Setback, the Riparian Setback shall be extended to the full extent of the wetlands plus the following additional setback widths:

- a) A 50 foot setback extending beyond the outer boundary of a Category 3 wetlands;
- b) A 30 foot setback extending beyond the outer boundary of a Category 2 wetlands;
- c) No additional setback will be required adjacent to Category 1 wetlands;

Grassy swales, roadside ditches, drainage pipes or ditches to convey stormwater created or approved by the Village are exempt from this provision.

F. Jurisdictional Stream or River: a watercourse that is indicated on one of the following maps: USGS Topographical Map, Summit County Riparian Setback Map, or Summit County Soils Map (USDA, NRCS).

G. Wetlands: areas delineated by a qualified professional under guidelines established by the US Army Corps of Engineers and Ohio Environmental Protection Agency and the site delineation approved by the agencies having jurisdiction over such areas.. All wetland delineations shall also include the latest version of the Ohio Rapid Assessment Method for wetland evaluation approved at the time of application of the regulations.

1169.04 USES PERMITTED IN THE WATERFRONT AND RIPARIAN SETBACKS.

A. Main Uses

- 1. Within the Waterfront Setback Where the Property is Situated in the Park and Recreational District:
 - i. The Main Uses described in Section 1135.02(a)
- 2. Within the Waterfront Setback Where the Property is Situated in the Residential Use District:
 - i. Passive uses not involving structures or impervious cover, otherwise complying with applicable law, not involving construction or excavation or the clearing of existing vegetation or the clear-cutting of trees and which are incident to the daily life activities of the property owner;

- ii. (i) control of noxious weeds; (ii) removal of damaged or diseased trees (as defined in Section 1169.03(A), and removal of healthy trees with a diameter at breast height of less than six inches, provided that logs or branches greater than six inches in diameter shall be removed from the setback area and lawfully disposed of; (iii) abandonment of a Lawful Nonconforming Waterfront or Riparian Use incident to the restoration of a Waterfront Setback or Riparian Setback to its natural state by introduction of native, non invasive plantings from among those listed on Exhibit A hereto.

B, Accessory Uses:

- 1. Accessory Uses Within the Waterfront Setback Where the Property is Situated in the Park and Recreational District:
 - a. Those Accessory Uses described in Section 1135.02(a)
- 2. Accessory Uses Within the Waterfront and Riparian Setback Where the Property is Situated in the Residential Zoning District:
 - a. None.

C. Conditional Uses:

- I. in the Waterfront and Riparian Setback Whether the Property is Situated in the Residential Zoning District or the Park and Recreation Zoning District:
 - i. Conditional Uses specified in this Code.
 - ii. Installation and maintenance of new lawn areas;
 - iii. Removal of healthy trees with a diameter at breast height of six inches or more.

Applications for Conditional Uses in the Waterfront or Riparian Setbacks shall be considered by the Planning Commission pursuant to the [site plan review](#) standards set forth in Section 1133.06 and the following additional considerations:

- 1) Whether such proposed Conditional Use otherwise complies with the Codified Ordinances and applicable law (i.e. the law governing jurisdictional wetlands);
- 2) No Conditional Use may be approved to the extent it would result in or increase an encroachment into, a Watercourse
- 3) Approval of such Conditional Use shall not be construed as allowing trespass on the lands of another;
- 4) Healthy trees may be removed provided that
- 5) when any healthy tree greater than six inches in diameter at breast height is removed it shall be replaced with a new tree or trees from among the species set forth on Exhibit A hereto and with installed diameters (at breast height) in

the aggregate equal to or greater than the aggregate diameter(s) (at breast height) of the tree(s) removed. The replacement trees shall be of the maximum diameter practicable for transplanting. In considering a request for approval of a Conditional Use to permit the removal of a healthy tree as herein provided, the the Planning Commission may consult with the Silver Lake Shade Tree Commission established pursuant to Section 135.02 of the Silver Lake Codified Ordinances. Logs or branches greater than six inches in diameter shall be removed from the setback area and lawfully disposed of;

- 6) Proposed revegetation and/or reforestation shall employ native trees and/or vegetation as determined by the Ohio Department of Natural Resources as set forth on Exhibit A.
- 7) Design of stabilization and erosion control measures shall be approved by the Village Engineer and that approval shall be part of the application package submitted to the Planning Commission review.
- 8) Whether a front, side or rear yard setback zoning variance or similar variance should be considered to maintain the required Waterfront Setback or Riparian Setback.
- 9) Whether other science-based reasonable remedial or protective steps could be taken in connection with the Conditional Use so as to diminish adverse effects on the Waterfront Setback or the Riparian Setback, as the case may be.

D, No use permitted under this Section shall be construed as allowing a trespass on the lands of another. In each case, reasonable precautions shall be taken to prevent runoff of sediment, herbicides, pesticides, fertilizer and other treatments into the abutting Watercourse.

E. The applicant shall be responsible for delineating and identifying the Riparian Setback on all subdivision plans, site plans, permit applications and other submittals. Such delineation must be approved by the Summit Water Conservation District and incorporate all conditions and limitations imposed by it. Prior to any soil disturbing activity, the Riparian Setback or the Waterfront Setback, as the case may be, shall be clearly marked with silt fencing or other suitable material by the applicant on site, which shall be maintained throughout the construction period. The setback area shall be maintained in an undisturbed state unless otherwise permitted under these regulations. Fencing shall be removed only when a project is completed.

F. Upon completion of an approved subdivision, the Riparian Setback or Waterfront Setback, as the case may be, shall be permanently recorded on the plat records for the County of Summit.

1169.05 LAWFUL NON-CONFORMING USES IN THE WATERFRONT OR RIPARIAN SETBACK.

- A. Lawful Nonconforming Waterfront or Riparian Uses may be continued but shall not be expanded except as set forth below. If damaged or destroyed, a Lawful Nonconforming Waterfront or Riparian Use may be repaired or restored to its original condition within one

year from the date of damage/destruction, at the property owner's own risk. The purchaser of a lot upon which there then exists a Lawful Nonconforming Waterfront or Riparian Use may continue such use subject to the provisions of these Codified Ordinances.

- B. A Lawful Nonconforming Waterfront or Riparian Use may be expanded by application as follows:
1. Applications for approval of the expansion of a Lawful Nonconforming Waterfront or Riparian Use in the Residential District up to 15% in the aggregate of the existing structure and impervious cover comprising such use shall be made to the Planning Commission and shall be considered by it as a Conditional Use under the provisions of Section 133.06.
 2. Applications for approval of the expansion of a Lawful Nonconforming Waterfront or Riparian Use in any district other than the Residential District, or if in the Residential District the proposed expansion would, if approved, exceed 15% of the existing structure and impervious cover comprising such use, shall be made to the Board of Zoning Appeals as an application for a variance. Such application shall be governed by the procedures set forth in the Chapter 1109 of these Codified Ordinances.
 3. In either event, upon completion, the Lawful Nonconforming Waterfront or Riparian Use, as expanded, shall conform to the Codified Ordinances except to the extent of: (i) the approvals granted by the Planning Commission or the Board of Zoning Appeals as the case may be; and (ii) the pre-existing lawful nonconformity.
 4. A Lawful Nonconforming Waterfront or Riparian Use may not be expanded to the extent that the expansion, if approved if it: (i) would encroach or increase a pre-existing encroachment into a Watercourse; (ii) or (ii) would violate otherwise applicable law (i.e. the law governing jurisdictional wetlands).
 5. In considering a request for expansion of a Lawful Nonconforming Waterfront or Riparian Use, the Planning Commission or the Board of Zoning Appeals, as the case may be, may consult with representatives from the Summit SWCD; the Ohio Department of Natural Resources, Division of Natural Areas; the Ohio Environmental Protection Agency, Division of Surface Water; the Village Engineer; the Department of Environmental Services of Summit County; the Summit County Health Department; or other technical experts as it deems necessary to consider variance requests.
 6. In considering whether to approve an expansion of a Lawful Nonconforming Waterfront or Riparian Use, and in addition to the provisions governing Conditional Uses (as to the Planning Commission) and variances (as to the Board of Zoning Appeals) each of them, as the case may be, may consider the matters described in Section 1109.05(A) and Section 1133.06.

1169.06 SITE PLAN REVIEW

- (a) For the Residential District, in the Waterfront or Riparian setbacks, site plan review by the Planning Commission shall be required for any new proposed use or any change of grade or change in the vegetation, cover plants, shrubs, or tree canopy, except where Section 1169.04 (a)(1) or (2) apply. Planning Commission

approval shall be based on whether or not such proposed use or activity complies with the Codified Ordinances and other applicable law, and the spirit and intent of such laws. For the Park and Recreational District, site plan review shall be required for the Waterfront and Riparian Setbacks, pursuant to Section 1135.07 and subject to regulations in this Chapter 1169. In addition to the foregoing, Planning Commission shall apply the provisions of Section 1133.06, whether the property is in the Park and Recreational District or the Residential District. Approvals pursuant to this Chapter shall not be construed as allowing trespass on the lands of another.

1169.07 INSPECTION OF WATERFRONT OR RIPARIAN SETBACK.

- (A) Any Waterfront Setback or Riparian Setback may, upon the request of the Village Engineer and upon prior notice to the landowner, be inspected by the Summit SWCD:
1. When a preliminary subdivision plat or other land development plan is submitted to the Village of Silver Lake.
 2. When a building or zoning permit is requested.
 3. Prior to any soil disturbing activity to inspect the Waterfront Setback or the Riparian Setback incident to an application made pursuant to these Codified Ordinances.

EXHIBIT A

1: Woody Plants Suitable for Waterfont/Riparian Areas

This list was assembled by Roger Gettig, The Holden Arboretum for Chagrin River Watershed Partners.

Flood Tolerance* <u>High Flood Tolerance</u>	Shade <u>Tolerance**</u>	Common <u>Name</u>
<i>Aronia arbutifolia</i>	3	Red chokeberry
<i>Aronia melanocarpa</i>	3	Black chokeberry
<i>Cephalanthus occidentalis</i>	5	Common buttonbush
<i>Clethra alnifolia</i>	2	Summersweet clethra***
<i>Cornus amomum</i>	4	Silky dogwood
<i>Cornus stolonifera (sericea)</i>	5	Redosier dogwood
<i>Hamamelis vernalis</i>	3	Vernal witchhazel ***
<i>Ilex decida</i>	3	Possumhaw ***
<i>Ilex glabra</i>	2	Inkberry ***
<i>Ilex verticillata</i>	3	Common winterberry
<i>Itea virginica</i>	1	Virginia sweetspire ***
<i>Magnolia virginiana</i>	2	Sweetbay magnolia ***
<i>Myrica pensylvanica</i>	4	Northern bayberry
<i>Physocarpus opulifolius</i>	4	Common ninebark
<i>Potentilla fruticosa</i>	4	Bush cinquefoil
<i>Sambucus canadensis</i>	1	American elderberry
<i>Salix x cotteti</i>	5	"Bankers" willow ***
<i>Salix exigua</i>	5	Sandbar willow
<i>Salix purpurea</i>	5	"Streamco" willow ***
<i>Viburnum cassinoides</i>	2	Witherod viburnum
<i>Parthenocissus quinquefolia</i>	1	Virginia creeper (vine)

Flood Tolerance* <u>Moderate Flood Tolerance*</u>	Shade <u>Tolerance**</u>	Common <u>Name</u>
<i>Calycanthus floridus</i>	1	Common sweetshrub
<i>Hypericum kalmianum</i>	5	Kalm St. Johnswort
<i>Viburnum dentatum</i>	2	Arrowwood viburnum
<i>Xanthorhiza simplicissima</i>	1	Yellowroot ***

<u>Intermediate Flood Tolerance*</u>	<u>Shade Tolerance**</u>	<u>Common Name</u>
<i>Aesculus parviflora</i>	2	Bottlebush buckeye ***
<i>Aesculus pavia</i>	2	Red buckeye ***
<i>Cornus racemosa</i>	2	Gray dogwood
<i>Lindera benzoin</i>	1	Common spicebush
<i>Rosa setigera</i>	4	Prairie rose
<i>Campsis radicans</i>	3	Trumpetcreeper (vine)
<i>Lonicera dioica</i>	2	Limber honeysuckle (vine)
<i>Corylus americana</i>	2	American filbert
<i>Diervilla lonicera</i>	1	Dwarf bush honeysuckle
<i>Fothergilla gardeni</i>	1	Dwarf fothergilla ***
<i>Fothergilla major</i>	1	Large fothergilla ***
<i>Hydrangea arborescens</i>	1	Smooth hydrangea
<i>Hydrangea quericifolia</i>	1	Oakleaf hydrangea ***
<i>Mahonia aquifolium</i>	1	Oregongrape holly ***
<i>Rosa carolina</i>	4	Carolina rose
<i>Rubus odoratus</i>	1	Fragrant thimbleberry
<i>Vaccinium stamineum</i>	2	Common deerberry

<u>Low Flood Tolerance</u>	<u>Shade Tolerance**</u>	<u>Common Name</u>
<i>Arctostaphylos uva-ursi</i>	4	Bearberry
<i>Cornus rogersii</i>	1	Roundleaf dogwood
<i>Corylus americana</i>	2	American filbert
<i>Diervilla lonicera</i>	1	Dwarf bushhoneysuckle
<i>Fothergilla gardeni</i>	1	Dwarf fothergilla ***
<i>Fothergilla major</i>	1	Large fothergilla ***
<i>Hydrangea arborescens</i>	1	Smooth hydrangea
<i>Hydrangea quericifolia</i>	1	Oakleaf hydrangea ***
<i>Mahonia aquifolium</i>	1	Oregongrape holly ***
<i>Rosa carolina</i>	4	Carolina rose
<i>Rubus odoratus</i>	1	Fragrant thimbleberry
<i>Symphoricarpos albus</i>	1	Common snowberry
<i>Vaccinium stamineum</i>	2	Common deerberry

<u>No Flood Tolerance</u>	<u>Shade Tolerance**</u>	<u>Common Name</u>
<i>Amorpha canescens</i>	5	Leadplant ***
<i>Ceanothus americanus</i>	3	New Jersey tea
<i>Comptonia peregrina</i>	2	Sweetfern
<i>Dirca palustris</i>	1	Leatherwood
<i>Hypericum frondosum</i>	5	Golden St. Johnswort
<i>Juniperus communis</i>	5	Common juniper
<i>Juniperus horizontalis</i>	5	Creeping juniper ***
<i>Rhus aromatica</i>	5	Fragrant sumac
<i>Sambucus pubens</i>	1	Scarlet elder
<i>Symphoricarpos albus</i>	1	Common snowberry

***High Flood Tolerance:** Generally lowland wet species surviving when flooded or exposed to high water table more than 40% of the growing season.

***Moderate Flood Tolerance:** Generally lowland wet species surviving when flooded or exposed to high water table more than 30% of the growing season but less than 40%.

***Intermediate Flood Tolerance:** Generally lowland wet-mesic species surviving occasional inundation or elevated water table between 20% and 30% of the growing season.

***Low Flood Tolerance:** Generally upland mesic and mesic-dry species rarely inundated or exposed to an elevated water table for periods of short duration, between 5% and 20% of the growing season.

***No Flood Tolerance:** Generally upland dry species exhibiting immediate and rapid decline frequently culminating in death if inundated or exposed to elevated water table for more than 5% of the growing season.

****Shade Tolerance:** Shade tolerance means able to grow in a state of health and vigor beneath dense shade. In this ranking, shrubs and vines are ranked on a scale of 1 to 5, with 1 being very shade tolerant, and 5 being very shade intolerant.

Note:

1. The majority of plants listed are available on the local commercial market and do not displace native species.
2. The cultivated varieties (“cultivars”) of the species listed above may also be used.
3. Primary information taken from Hightshoe, Gary, 1987. Native Trees, Shrubs, and vines for Urban and Rural America. Van Nostrand. NY, NY
4. For further assistance contact Roger Gettig, Landscape Consulting Program, The Holden Arboretum, or Steve Roloson, ODNR Scenic Rivers Program.

2: Shade Trees Suitable for Waterfront/Riparian Areas

Resource: The Holden Arboretum web site

Best Native Ohio Trees

Standing Strong: Some tree species adapt better to environmental change and disturbance than others. These adaptable trees resist pests and diseases or tolerate changes in shade levels, drought and storm systems. Climate change models project the following species will thrive in Northeast Ohio over the next several decades:

	Height at maturity	Spread at maturity	Growth/year
Butternut Hickory	80' to 100'	60' to 80'	18" to 24"
Black Oak	70' to 90"	70' to 90'	14" to 18"
Black Walnut	70' to 90'	70' to 90'	18" to 24"
Bur Oak	70' to 80'	70' to 80'	14" to 18"
Eastern Red Cedar	40' to 55'	10' to 25'	9" to 12"
Scarlet Oak	70' to 90'	70' to 90'	16" to 20"

Recently Adaptive Trees

American Sweetgum	60' to 85'	40' to 50'	18" to 24"
Blackjack Oak	35' to 50'	35' to 60'	7" to 10"
Chinkapin Oak	70' to 90'	70' to 90'	16" to 20"
Common Persimmon	45' to 60'	25' to 40'	14" to 18"
Post Oak	50' to 55'	40' to 60'	14" to 18"

Resource for measurements and growth rate: ODNR Division of Forestry web site

Nonnative Trees but naturalized species also suitable for the area

Catalpa	70'	40'	25" or greater
Sycamore (or London Plane)	80' or larger	60'	13"-25"
Buckeye, Yellow	60'-75'	30'-50'	12"-24"
Maple, Sugar	60'-75'	40'-50'	12"-24"

Likes moist/wet soil

Swamp White Oak	60' to 70'	60'	12" 24"
Eastern Cottonwood	80' or larger	60'	25" or greater
Alder, European	40'-60'	20'-40'	25" or greater

CURRENT

1169.01 PUBLIC PURPOSE.

(a) It is hereby determined that the system of watercourses within the Village of Silver Lake contribute to the health, safety and general welfare of the residents of The Village of Silver Lake . The purpose of these Riparian Setback Development Standards is to protect and preserve the water quality within watercourses of the Village of Silver Lake and to protect residents of The Village of Silver Lake from property loss and damage because of flooding and other surface water environmental impacts. These regulations shall control uses and development within a Riparian Setback that would impair the ability of the riparian area to:

(1) Reduce flood impacts by absorbing peak flows, slowing the velocity of floodwaters and regulating base flow.

(2) Stabilize the banks of watercourses to reduce bank erosion and the downstream transport of sediments eroded from stream banks.

(3) Reduce pollutants in watercourses during periods of high flows by filtering, settling and transforming pollutants already present in watercourses .

(4) Reduce pollutants in watercourses during periods of high flows by filtering, settling and transforming pollutants in runoff before they enter watercourses .

(5) Provide areas for natural meandering and lateral movement of stream channels.

(6) Reduce the presence of aquatic nuisance species to maintain diverse and connected riparian vegetation.

(7) Provide high quality stream habitats with shade and food to a wide array of wildlife by maintaining diverse and connected riparian vegetation.

(8) Benefit the Village of Silver Lake economically by minimizing encroachment on stream channels and reducing the need for costly engineering solutions such as dams and riprap, to protect structures and reduce property damage and threats to the safety of watershed residents, and by contributing to the scenic beauty and to the environment of the Village of Silver Lake, the quality of life of the residents of the Village of Silver Lake and corresponding property values.

(9) Protect the health, safety, and welfare of the citizens of the Village of Silver Lake.

(b) These regulations have been adopted to protect these services of riparian areas by providing reasonable controls governing structures and uses in Riparian Setbacks.

(Ord. 83-2007. Passed 11-19-07.)

1169.02 COMPLIANCE AND VIOLATIONS.

(a) No zoning approvals shall be issued by the Village of Silver Lake without full compliance with the terms of these provisions.

(b) In addition to the enforcement powers of the Village of Silver Lake to enforce the provisions of this Zoning Resolution, these requirements may be enforced through civil or criminal proceedings brought by the Village of Silver Lake.

(Ord. 83-2007. Passed 11-19-07.)

CURRENT

1169.03 DEFINITIONS.

(a) **BEST MANAGEMENT PRACTICES (BMPs):** Conservation practices or protection measures which reduce impacts from a particular land use. Best Management Practices for construction are outlined in “Rainwater and Land Development, Ohio’s Standard for Stormwater Management, Land Development, and Urban Stream Protection” prepared by the Ohio Department of Natural Resources.

(b) **DAMAGED OR DISEASED TREES:** Trees that have split trunk, broken tops, heart rot, insect or fungus problems that will lead to imminent death, undercut root systems that put the tree in imminent danger of falling, lean as a result of root failure that puts the tree in imminent danger of falling, or any other condition that puts the tree in imminent danger of being uprooted or falling into or along a stream or onto a structure.

(c) **DEFINED CHANNEL:** A natural or man-made depression in the terrain which is maintained and altered by the water and sediment it carries.

(d) **FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA):** The agency with overall responsibility for administering the National Flood Insurance Program.

(e) **FINAL PLAT:** A final tracing of all or a phase of a subdivision in and its complete survey information.

(f) **IMPERVIOUS COVER:** Any surface that cannot effectively absorb or infiltrate water. This may include roads, streets, parking lots, rooftops, sidewalks and other areas not covered by vegetation.

(g) **NATURAL SUCCESSION:** A gradual and continuous replacement of one kind of plant and animal group by a more complex group. The plants and animals present in the initial group modify the environment through their life activities thereby making it unfavorable for themselves. They are gradually replaced by a different group of plants and animals better adapted to the new environment.

(h) **OHIO RAPID ASSESSMENT METHOD:** A multi-parameter qualitative index established by the Ohio Environmental Protection Agency to evaluate wetland quality and function.

(i) **100-YEAR FLOODPLAIN:** Any land susceptible to being inundated by water from a base flood, which is the flood that has a one percent or greater chance of being equaled or exceeded in any given year. For the purposes of these regulations, the 100-year floodplain shall be defined by FEMA and approved by the County of Summit Department of Building Standards.

(j) **ORDINARY HIGH WATER MARK:** The point of the bank or shore to which the presence and action of surface water is so continuous as to leave a district marked by erosion, destruction or prevention of woody terrestrial vegetation, predominance of aquatic vegetation or other easily recognized characteristic. The ordinary high water mark defines the channel of a stream.

(k) **POLLUTION:** Any contamination or alteration of the physical, chemical, or biological properties of any waters that will render the waters harmful or detrimental to: public health, safety or welfare; domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses; livestock, wildlife, including birds, fish or other aquatic life.

(l) “POINT SOURCE” pollution is traceable to a discrete point or pipe.

CURRENT

(2) “NON-POINT SOURCE” pollution is generated by various land use activities rather than from an identifiable or discrete source, and is conveyed to waterways through natural processes, such as rainfall, storm runoff, or ground water seepage rather than direct discharge.

(l) PRELIMINARY PLAN: A drawing of a major subdivision for the purpose of study and which, if approved, permits proceeding with the preparation of the final plat.

(m) RIPARIAN AREA: A transitional area between flowing water and terrestrial ecosystems, which provides a continuous exchange of nutrients and woody debris between land and water. This area is at least periodically influenced by flooding. Riparian areas, if appropriately sized and managed, help to stabilize banks, limit erosion, reduce flood size flows and/ or filter and settle out runoff pollutants, or perform other functions consistent with the purposes of these regulations.

(n) RIPARIAN SETBACK: The area set back from each bank of a stream to protect the riparian area and stream from impacts of development, and watercourses and lakeside residents from impacts of flooding and land loss through erosion. Riparian Setbacks are those lands within the Village of Silver Lake that fall within the area defined by the criteria set forth in these regulations.

(o) SOIL AND WATER CONSERVATION DISTRICT (SWCD): An entity organized under Chapter 1515 of the Ohio Revised Code referring to either the Soil and Water Conservation District Board or its designated employees, hereinafter referred to as the Summit SWCD.

(p) SOIL DISTURBING ACTIVITY: Clearing, grading, excavating, filling or other alteration of the earth’s surface where natural or human made ground cover is destroyed and which may result in, or contribute to, erosion and sediment pollution.

(q) STREAM: A surface watercourse with a well-defined bed and bank, either natural or artificial, which confines and conducts continuous or periodical flowing water.

(r) STORMWATER POLLUTION PREVENTION PLAN (SWPPP): The plan which describes all the elements of the stormwater strategy implemented during and after construction. The plan addresses erosion control and stormwater runoff quality.

(s) STORMWATER QUALITY TREATMENT: The removal of pollutants from urban runoff and improvement of water quality, accomplished largely by deposition and utilizing the benefits of natural processes.

(t) VARIANCE (RIPARIAN SETBACK): A modification of the enforcement of the Riparian Setback regulations which will not be contrary to the public interest and where, due to conditions peculiar to this property and not the result of the action of the applicant, a literal enforcement of the regulation would result in undue hardship to the applicant.

(u) WATERCOURSE: A natural or artificial waterway, such as a stream, river, or lake with a defined bed and channel and a definite direction of course or outlet that is contained within, flows through, or borders the community. Both Silver Lake and Crystal Lake are included in this definition.

(v) WATERSHED: An area of land that drains into a particular watercourse, usually divided by topography.

(w) WETLANDS: Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a

CURRENT

prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs, and similar areas.

(Ord. 83-2007. Passed 11-19-07.)

1169.04 ESTABLISHMENT OF A RIPARIAN SETBACK.

- (a) Riparian Setbacks are established as provided in these regulations.
- (b) Watercourses and lakes addressed by these regulations are either those which meet the definition of “WATERCOURSE” or appear as indicated on at least one of the following maps:
 - (1) USGS topographical map
 - (2) Summit County Riparian Setback map
 - (3) Soils maps located in the Soil Survey for Summit County, Ohio, USDA, NRCS
- (c) Widths of setbacks are measured as horizontal map distance outward from the ordinary high water mark on each side of a stream, a river, or the shore of a lake, and are established as follows: .
 - (1) A minimum of 300 feet on each side of all watercourses and lakes draining an area greater than 300 square miles.
 - (2) A minimum of 100 feet on each side of all watercourses and lakes draining an area greater than 20 square miles and up to 300 square miles.
 - (3) A minimum of 75 feet on each side of all watercourses and lakes draining an area greater than 0.5 square mile (320 acres) and up to 20 square miles.
 - (4) A minimum of 50 feet on each side of all watercourses and lakes draining an area greater than 0.05square mile (32 acres) and up to 0.5 square mile (320 acres).
 - (5) A minimum of 30 feet on each side of all watercourses and lakes draining an area less than 0.05 square mile (32 acres).
- (d) The following are exempt from the terms and protection of these regulations: grassy swales, roadside ditches, drainage ditches created at the time of a subdivision to convey stormwater to another system, tile drainage systems, and stream culverts.
- (e) The following shall apply to the Riparian Setback:
 - (1) Where the 100-year floodplain is wider than the Riparian Setback on either or both sides of the stream, the Riparian Setback shall be extended to the outer edge of the 100-year floodplain. The 100-year floodplain shall be defined by FEMA and approved by the County of Summit Department of Building Standards.
 - (2) Because the gradient of the riparian corridor significantly influences impacts on the stream, the following adjustment for steep slopes will be integrated into the Riparian Setback formulae for width determination:

CURRENT

Average Percent Slope	Width of Setback
15% - 20%	Add 25 feet
21%+ - 25%	Add 50 feet
> 25%	Add 100 feet

(3) Where wetlands protected under federal or state law are identified within the Riparian Setback, the Riparian Setback shall consist of the full extent of the wetlands plus the following additional setback widths:

- A. A 50 foot setback extending beyond the outer boundary of a Category 3 wetlands
- B. A 30 foot setback extending beyond the outer boundary of a Category 2 wetlands
- C. No additional setback will be required adjacent to Category 1 wetlands

(4) Wetlands shall be delineated by a qualified professional under guidelines established by the US Army Corps of Engineers and Ohio Environmental Protection Agency and the site delineation approved by the appropriate agencies. All wetland delineations shall also include the latest version of the Ohio Rapid Assessment Method for wetland evaluation approved at the time of application of the regulations.

(5) The applicant shall be responsible for delineating the Riparian Setback, including any expansions or modifications as required by subsections (b) through (d) of this section, and identifying this setback on all subdivisions, site plans, and/or zoning permit applications. This delineation shall be done at the time of application of the preliminary plans, or all plans that are required, or at the time of submission of any permit applications. This delineation shall be subject to review and approval by the Summit SWCD. As the result of this review, the Summit SWCD may require further studies from the applicant.

(6) Prior to any soil disturbing activity, the Riparian Setback shall be clearly delineated with construction fencing or other suitable material by the applicant on site, and such delineation shall be maintained throughout soil- disturbing activities. The delineated area shall be maintained in an undisturbed state unless otherwise permitted by these regulations. All fencing shall be removed when a development project is completed.

(7) No approvals or permits shall be issued by the Village of Silver Lake prior to delineation of the Riparian Setback in conformance with these regulations.

(8) Upon completion of an approved subdivision, the Riparian Setback shall be permanently recorded on the plat records for the County of Summit.

(Ord. 83-2007. Passed 11-19-07.)

1169.05 USES PERMITTED IN THE RIPARIAN SETBACK.

(a) The following uses are permitted by right within the Riparian Setbacks without prior approval. Open space uses that are passive in character shall be permitted in the Riparian Setback including, but not limited to, those listed in subsections (a)(1) through (a)(4) hereof. No use permitted under these regulations shall be construed as allowing trespass on privately held lands. Alteration of this natural area is strictly limited. Except as otherwise provided in these regulations, the Riparian Setback shall be preserved in its natural state.

CURRENT

(1) Recreational Activity. Passive recreational uses, as permitted by federal, state, and local laws, such as hiking, non-motorized bicycling, fishing, hunting, picnicking and similar uses and associated structures including boardwalks, pathways constructed of pervious material, picnic tables, and wildlife viewing areas.

(2) Removal of Damaged or Diseased Trees. Damaged or diseased trees may be removed. Because of the potential for felled logs and branches to damage downstream properties and/or block ditches or otherwise exacerbate flooding, logs and branches resulting from the removal of damaged or diseased trees that are greater than 6 inches in diameter, shall be anchored to the shore or removed from the 100-year floodplain.

(3) Revegetation and/or Reforestation. The revegetation and/or reforestation of the Riparian Setback shall be allowed without approval of the Summit SWCD. Species of shrubs and vines recommended for stabilizing flood prone areas along watercourses and lakes within the Village of Silver Lake are listed in the Appendix.

(4) The Village of Silver Lake Engineer maintains the right of access to all watercourses and lakes within the Village of Silver Lake for the purposes outlined in the Ohio R.C. 6131.01 to 6131.64, 6133.01 to 6133.15, 6135.01 to 6135.27, and 6137.05.1.

(b) The following uses are permitted by right within the Riparian Setbacks with prior approval of the design.

(1) Stream Bank Stabilization/Erosion Control Measures. Best Management Practices (BMP's) for stream bank stabilization or erosion control may be allowed if such practices are within permitted uses by the local, state, and federal government regulations and are ecologically compatible and emphasize the use of natural materials and native plant species where practical and available. Such stream bank stabilization/ erosion control practices shall only be undertaken upon approval of a Stormwater Pollution Prevention Plan (SWPPP or SW3P) by the Summit SWCD.

(2) Crossings. In reviewing plans for stream crossings, the Village of Silver Lake may confer with the Summit SWCD, the Ohio Department of Natural Resources, Division of Natural Areas; the Ohio Environmental Protection Agency, Division of Surface Water; the Village of Silver Lake Engineer; the Department of Environmental Services of Summit County; the Summit County Health Department; or other technical experts as necessary.

A. Limited crossings of designated watercourses and lakes through the Riparian Setback by vehicles, storm sewers, sewer and / or water lines, and public utility lines will be per the approval of local, county, and state governing agencies and as a part of the regular subdivision review process.

B. One driveway crossing per stream per tax parcel will be allowed for individual landowners.

C. Roadway crossings for major and minor subdivisions, open space subdivisions, or any other non-single family residential use shall be designed and constructed per the Village of Silver Lake Engineer's design standards and as approved by the Village of Silver Lake Planning Commission and approving The Village of Silver Lake. If more than two crossings per 1,000 linear feet of stream center are required for these areas, the applicant must apply for a variance.

D. All roadway crossings shall be perpendicular to the stream flow and shall minimize disturbance to the Riparian Setback and shall mitigate any necessary disturbances.

CURRENT

(3) Placement of stormwater retention or detention facilities may be considered within the Riparian Setback if:

A. Stormwater quality treatment that is consistent with current state standards is incorporated into the basin.

B. The stormwater quality treatment basin is located at least 50 feet from the ordinary high water mark of the stream.

(Ord. 83-2007. Passed 11-19-07.)

1169.06 USES PROHIBITED IN THE RIPARIAN SETBACK.

The following uses are specifically prohibited within the Riparian Setback:

- (a) Construction. There shall be no structures of any kind, except as permitted under these regulations.
- (b) Dredging or Dumping. There shall be no drilling for petroleum or mineral products, mining activity, filling or dredging of soil, spoils, or any material—natural or man-made—except as permitted under these regulations.
- (c) Roads or Driveways. There shall be no roads or driveways, except as permitted under these regulations.
- (d) Motorized Vehicles. There shall be no use of motorized vehicles of any kind, except those related to necessary maintenance functions on the property.
- (e) Modification of Natural Vegetation. Modification of the natural vegetation shall be limited to conservation maintenance that the landowner deems necessary to control noxious weeds; for such plantings as are consistent with these regulations; for such disturbances as are approved under these regulations; and for the passive enjoyment, access and maintenance of landscaping or lawns existing at the time of passage of these regulations.

Nothing in this section shall be construed as requiring a landowner to plant or undertake any other activities in the Riparian Setback provided the landowner allows for natural succession.

(f) Parking Lots. There shall be no parking lots or other human made impervious cover, except as permitted under these regulations.

(Ord. 83-2007. Passed 11-19-07.)

1169.07 NON-CONFORMING STRUCTURES OR USES IN THE RIPARIAN SETBACK.

- (a) Structures and uses within the Riparian Setback, existing on the effective date of these regulations, that are not permitted under these regulations, may be continued but shall not be expanded except as set forth below.
- (b) If damaged or destroyed, these structures or uses may be repaired or restored within two years from the date of damage/destruction, at the property owner's own risk.
- (c) A residential structure or use within the Riparian Setback existing upon the effective date of these regulations, may be expanded subject to the provisions of subsections (c)(1) through (3) below:
 - (1) The expansion conforms to existing zoning regulations.

CURRENT

(2) The expansion must not impact the stream channel or the 100-year flood plain.

(3) The expansion must not exceed an area of fifteen percent (15%) of the footprint of existing structure or use that lies within the Riparian Setback. Expansions exceeding fifteen percent (15%) of the total footprint within the Riparian Setback must be obtained through a variance form the Board of Zoning Appeals.

(d) Non-residential structure or use expansions will be permitted only through a variance from the Board of Zoning Appeals.

(Ord. 83-2007. Passed 11-19-07.)

1169.08 BOUNDARY INTERPRETATION AND APPEALS PROCEDURE.

(a) When an applicant disputes the boundary of the Riparian Setback or the ordinary high water mark of a stream, the applicant shall submit evidence to the Village Planning Commission, that describes the boundary, presents the applicant's proposed boundary and presents all justification for the proposed boundary change.

(b) The Village Planning Commission shall evaluate all materials submitted and shall make a finding.

(c) The applicant may appeal the finding of the Village Planning Commission to the Village of Silver Lake Board of Zoning Appeals, by filing an appeal, in writing, with the Clerk of Council, within twenty (20) days of the written, final record of the Commission's decision. The party contesting the location of the Riparian Setback or the ordinary high water mark of the watercourses and lakes as determined by these regulations shall have the burden of proof in case of any such appeal.

(Ord. 83-2007. Passed 11-19-07.)

1169.09 VARIANCES WITHIN RIPARIAN SETBACK.

(a) Applications for variances to the provisions of this Chapter shall be submitted to the Village of Silver Lake Board of Zoning Appeals.

(b) The Village of Silver Lake Board of Zoning Appeals shall consult with representatives from the Summit SWCD; the Ohio Department of Natural Resources, Division of Natural Areas; the Ohio Environmental Protection Agency, Division of Surface Water; the Village of Silver Lake Engineer; the Department of Environmental Services of Summit County; the Summit County Health Department; or other technical experts as necessary to consider variance requests.

(c) Expansions of residential structures or uses exceeding fifteen percent (15%) of the footprint area and expansions of all non-residential structures or uses are subject to subsections (c)(1) to (4) hereof:

(1) The expansion conforms to the existing zoning regulations.

(2) The expansion must not impact the stream channel or the 100-year floodplain.

(3) The expansion of a non-residential structure or use must not affect upstream or downstream hydrologic conditions which could cause damage from flooding or streambank erosion to landowners in those areas. A hydrologic study must be completed by non-residential applicants only as a process of the variance application.

CURRENT

(4) The expansion of a non-residential structure or use will not exceed twenty- five percent (25%) of the of the footprint area. The twenty-five percent (25%) expansion limit is per the portion of the structure or use that lies within the Riparian Setback.

(d) Requests for variances for subdivisions will be considered for the following:

(1) An additional stream crossing or crossings for a subdivision or open space development which is necessary for the health, welfare, and safety of the residents of the subdivision.

(2) A reduction of the setback width, not to exceed ten percent (10%) of the prescribed Riparian Setback width.

(e) No variances shall be granted for expansion of the following structures or uses:

(1) Facilities which use, store, distribute, or sell petroleum-based products or any hazardous materials. Such facilities include, but are not limited to: asphalt plants, dry cleaners, gasoline service stations, and road maintenance facilities.

(2) Facilities which use, store, distribute, or sell products which may contribute higher than acceptable concentrations of dissolved or particulate matter to stormwater runoff around the facility. Such facilities include, but are not limited to: landfills or transfer stations, junk yards, recycling facilities, quarries and borrow pits, sand and gravel extraction operations, and road salt storage barns.

(f) In reviewing whether to grant variances, the Village of Silver Lake Board of Zoning Appeals shall consider the following:

(1) The extent to which the requested variance impairs the functions of the riparian area. This determination shall be based on sufficient technical and scientific evidence as provided by the applicant and the agencies listed above.

(2) The soil type and natural vegetation of the parcel as well as the percentage of the parcel that is in the 100-year floodplain.

(3) The degree of hardship these regulations place on the applicant and the availability of alternatives to the proposed activity.

(4) Whether a front, side or rear yard setback zoning variance or similar variance should be considered to maintain the required Riparian Setback area.

(Ord. 83-2007. Passed 11-9-07.)

1169.10 INSPECTION OF RIPARIAN SETBACK.

(a) The Riparian Setback shall be inspected by the Summit SWCD:

(1) When a preliminary subdivision plat or other land development plan is submitted to the Village of Silver Lake.

(2) When a building or zoning permit is requested.

(3) Prior to any soil disturbing activity to inspect the delineation of the Riparian Setback as required under these regulations.

CURRENT

(b) The Riparian Setback shall also be inspected annually or as time permits by the Summit SWCD or approved monitoring entity for compliance with any approvals under these regulations or at any time evidence is brought to the attention of the Summit SWCD that uses or structures are occurring that may reasonably be expected to violate the provisions of these regulations.

(Ord. 83-2007. Passed 11-19-07.)

EXHIBITA

No changes observed, chart is available on-line.

From: Denny Stoiber <dennis9250@att.net>
Sent: Saturday, May 15, 2021 7:57 PM
To: Bill Church <bchurch@villageofsilverlake.com>; Christopher Scott <cscott@villageofsilverlake.com>; Betsy Meyer <bmeyer@villageofsilverlake.com>; Dann Nivens <dnivens@villageofsilverlake.com>; Therese Dunphy <tdunphy@villageofsilverlake.com>; Tim Nichols <tnichols@villageofsilverlake.com>; Matt Plesich <mplesich@villageofsilverlake.com>
Cc: Bernie Hovey <bhovey@villageofsilverlake.com>; 'Robert Heydorn' <robheydorn@hotmail.com>; Sean Housley <shousley@villageofsilverlake.com>; Suzanne Lipan <slipan@villageofsilverlake.com>; Lora Wilmoth <lwilmoth@villageofsilverlake.com>; Lou Ciraldo <lciraldo@summitconstruction.com>; dfbrownn@yahoo.com; Lapolla, Brian <BLapolla@akronchildrens.org>; 'Courtney Fint Zimmerman' <cpfint@gmail.com>
Subject: Waterfront and Riparian Setback References 5-15-21.docx

Dear Members of Council

As the date draws near for the public meeting and your third reading of the riparian setback legislation, this seems to be a good time to provide you with the attached document. In it I have presented a brief overview and a link to the six reports/studies that we used as guidance in preparing the text changes that we have recommended for Chapter 1169 of our code. During the planning commission's work on this issue we fielded many questions from Village residents concerning the new language. One person in particular asked for the technical backup supporting the need for and particulars of the setbacks and buffers we have recommended. It is certainly a fair request. We want to be sure that the community is comfortable in knowing that there is nothing arbitrary in our text change recommendations.

Please feel free to contact me with any questions.

Denny Stoiber, Chair
Silver Lake Planning Commission

ATTACHED:

Waterfront and Riparian Setback Development Standards – Overview of References

The following six documents were collected and reviewed by members of the Village Planning Commission during the period from January, 2019 through February 2020 as part of the process of fashioning recommendations for text revisions to the Silver Lake Village Zoning Code Chapter 1169 Riparian Setback Development Standards. Following is a brief overview of each document along with a link to each so that the reader may access the documents for a more detailed look at their contents.

Understanding the Science Behind Riparian Forest Buffers: Effects on Water Quality – Virginia Cooperative Extension – May 1, 2009

<https://www.pubs.ext.vt.edu/420/420-155/420-155.html>

This report references eighty scientific and economic research studies used in analyzing the causes, effects and green solutions related to water quality issues caused by surface runoff of stormwater. It provides meaningful data related to health risks associated with pollutants such as sediment, nutrients (Nitrogen and Phosphorus, primarily), pathogens and toxins, and the impacts

that hydrology, soils, vegetation and human activity have on the amount of such pollutants that reach the receiving water body. The Summary and Recommendations section of the report provides guidance on the nature and size of buffers, along with plant recommendations, to decrease the velocity of water flow and provide adequate surface area for sediment deposition before runoff reaches the lake or stream.

Explanation of Proposed Shoreline Buffer Widths – Environmental Science Associates – 2012 <http://www.clallam.net/LandUse/documents/MemoPSBW121112.pdf>

This report, prepared for the Clallam County (WA) Shoreline Master Program Advisory Committee, cites 25 different studies and plans related to the design of effective shoreline buffers. In particular, it organizes the results of those independent, scientific research studies into a chart that shows the width ranges of effective buffers related to six goals: Stream Temperature Control, Large Woody Debris Recruitment, Micro-Climate Control, Erosion Control & Sediment Removal, Nutrient/Pollutant Removal and Fish & Wildlife Habitat. For Erosion Control/Sediment Removal and Nutrient/Pollutant Removal, of particular importance in our case, the minimum effective buffer width is approximately 10 meters (33 feet). This is also the minimum buffer width for effective Water Temperature Control and for Fish & Wildlife Habitat according to the literature. The report also offers the recommendation that the buffers “be kept in a predominantly well vegetated and undisturbed condition.”

Shore Line Buffer – Geneva Lake Conservancy – September 9, 2013

<https://genevalakeconservancy.org/wp-content/uploads/2013/09/9-11-13-Revised-for-geese-Shoreline-Buffer-2.pdf>

This booklet, created by the Geneva Lake Conservancy (Fontana, WI), identifies problems within their lake resulting from storm runoff from buildings, pavements and lawns and proposes a solution using a planted buffer. The advantages of the buffer include: filtering out pollutants, preventing shoreline erosion, stabilizing lake-bottom sediment, screening undesirable views (while framing good ones) and providing habitat for wildlife while discouraging geese. Specific recommendations include a buffer width of at least 35 feet, no-mow within the buffer, and use of native plants to ensure adaptation to the site and minimizing maintenance. The booklet also includes recommendations for lake-adjacent property owners on lawn maintenance techniques that reduce potential water quality problems.

Westchester County, A Guide to Aquatic Buffers – Westchester County (NY) – February 2007

<http://www.catskillstreams.org/pdfs/Westchester%20County%20Water%20Resource%20Buffer%20Brochure%20FINAL%20for%20e-mail1.pdf>

The report “provides key background information along with simple buildings block tools for local governments, citizens and elected officials... to lay a foundation for establishing buffer protection and management guidelines for aquatic resources... The information is focused on interpreting and dissecting the most recent aquatic buffer management research for its application to typical urban and suburban settings...” It identifies the benefits of an aquatic buffer: erosion control, water quality protection, groundwater recharge and protection, ecosystem protection, natural capital value and economic value. It also identifies the three primary characteristics of good aquatic buffers: width, vegetative composition and allowable uses, and it provides recommendations to optimize those characteristics. It cites a 2003 study by the USDA Natural Resources Conservation Service that shows that buffer widths can be effective in providing water quality protection in widths ranging from 35 feet to 160 feet.

Buffer Up! For the health & beauty of our lakes – Lake Linganore Assoc. Eaglehead (MD) – 2016 <https://www.lakelinganore.org/wp-content/uploads/2018/01/2017-Buffer-Up.pdf>

This document provides information on the benefits of buffers as well as instruction on designing, installing and maintaining them. It also provides lists of native plants that would be appropriate for buffer planting. Links to useful reference materials are provided. This program, which ran through the fall of 2016, incentivized lakeside residents to create waterfront buffers to reduce pollution caused by runoff into Lake Linganore. It offered rebates on the cost of plant materials for those buffers.

Canada Geese: Human & Habitat Modification – Indiana Department of Natural Resources/Fish & Wildlife

<https://www.in.gov/dnr/fishwild/3002.htm>

“Urban areas are attractive places for geese because they prefer nicely groomed lawns adjacent to water.” This is the introductory sentence in this report from Indiana DNR. Reduced predator rates, limited hunting and feeding by residents are also noted as inducements to waterfowl and the water quality issues they bring to an urban lake. One of the most effective means of deterring goose habitation is the use of a vegetative buffer strip at water’s edge. The buffer acts not only as a physical barrier to geese but it also eliminates a clear line of sight that would reassure them that no predators are nearby. For the buffer strip to be effective it must be at least 30 feet wide and retain a mature height throughout the year of three feet tall according to this report. This report provides guidance on native plant selection and for maintenance requirements, including no mowing, for buffer strips.

Dennis C. Stoiber, Chair
Silver Lake Planning Commission
May 15, 2021

From: Hunter, David M. <DHunter@brouse.com>

Sent: Wednesday, June 16, 2021 2:07 PM

To: Sean Housley <shousley@villageofsilverlake.com>; Bill Church <bchurch@villageofsilverlake.com>; Matt Plesich <mplesich@villageofsilverlake.com>; Christopher Scott <cscott@villageofsilverlake.com>; Betsy Meyer <bmeyer@villageofsilverlake.com>; Dann Nivens <dnivens@villageofsilverlake.com>; Therese Dunphy <tdunphy@villageofsilverlake.com>; Tim Nichols <tnichols@villageofsilverlake.com>

Subject: Correspondence To SLV Council Members (And Other Village Leaders) Re: Riparian Setback Ordinance

Sean Housley, Clerk-Treasurer shousley@villageofsilverlake.com

Bill Church, President of Council, At Large bchurch@villageofsilverlake.com

Matt Plesich, Vice-President, District D mplesich@villageofsilverlake.com

Christopher Scott, At Large cscott@villageofsilverlake.com

Betsy Meyer, At Large bmeyer@villageofsilverlake.com

Dann Nivens, District A dnivens@villageofsilverlake.com

Therese Dunphy, District B tdunphy@villageofsilverlake.com

Tim Nichols, District C tnichols@villageofsilverlake.com

Ladies and gentlemen:

I write to express my concerns – shared by many – regarding the care and preservation of Silver Lake and Crystal Lake (“the “Lakes”), the environmental concerns impacting the Lakes, and the ability of our community to ensure that inappropriate conduct negatively impacting the Lakes – and indeed all property (and property values) within the Village – is properly and swiftly addressed.

I have been a Silver Lake resident from 1952-1972 and from 1984 to the present time. My wife Margaret and I live on lakefront property. During the past several decades we, like many, have continued to observe the unchecked threats to the Lakes that have resulted in a creeping decline in the water quality of the Lakes and the unwarranted intrusion by some lakefront landowners to trespass onto Silver Lake Estates (SLE) property (e.g., engaging in tree removal; installing shoreline barrier walls; etc.)

Currently, Village Council has been presented with an ordinance that is aimed at correcting the flaws in the existing riparian setback code by replacing its overly restrictive measures with a science-based buffer that will effectively protect the waters of the Lakes while dramatically reducing the impacts on property owners. It is an ordinance that places no new constraints on anyone (including the SLE board) and grandfathers all lawful nonconforming uses. If passed, this ordinance would allow a welcomed collaborative effort by both Village council and the SLE Board to work in tandem and for the best interest of all residents. It is disappointing and frankly dangerous that SLE appears to be using this debate as a potential opportunity to disengage itself from any oversight by the Village.

I served for over two decades on the SLE Board of Trustees, acting as the Board President in my final years of service. At that time, our Trustees not only took seriously our obligation of stewardship to act in the best interests of Silver Lake, but also worked with and collaborated with Village Council on all matters that touched upon and impacted all Village residents. We as SLE Board members were quite cognizant of the fact that the pre-1920 governing Trust uniquely gave

us a self-perpetuating Board which was devoid of any election to office or term limits and lacked any form of Trustee accountability to the residents who would essentially be impacted by the action (or inaction) by the SLE Board. In light of that, our SLE Board at that time took action carefully, and only after conferring with Village Council and after considering what impact our actions would have upon the Village and its residents.

In a startling reversal of cooperation that has been the century-long hallmark of the SLE Board – Village Council relationship, the current SLE Board, it appears, wants to disengage from Village collaboration; to act independently; and to make decisions that impact the entire Village without any accountability to the residents. Their goal appears to be taking what most would see as a partnership of two entities with the same goal – to protect the lake – and making it out as Village “interference”. Instead of seeking a partnership, they regrettably see the relationship as adversarial.

The most dangerous aspect of the SLE board’s reckless plan is that, if they are successful and the Lakes are removed from this section of the code, the Lakes will no longer reap the benefits of having a buffer and they will also lose the protections afforded by the Village’s enforcement tools (citations, stop work orders and fines) that can quickly respond to code violations such as was the case with a recent lakefront landowner in 2019 – just two years ago. In that incident, involving a very uncooperative landowner, the issue was resolved and the denuded land was stabilized and replanted in seven weeks from the day that the damage was recognized because the Village Solicitor threatened substantial daily fines if the property owners did not follow through on their agreement to restore the property. All this was accomplished with no cost to anyone but those who created the problem. The board will, if it cuts ties with the Village, gain its independence but will also be a toothless tiger the next time there is a similar occurrence. Faced with a similar situation, the Board will be left only with its powers of persuasion, which would have been ineffective with the 2019 incident, and its option to engage in a drawn-out and expensive lawsuit. The 450 members of the Silver Lake Estates will have to foot the bill for such a lawsuit and for any additional costs that may be necessary to remediate the damage to the lake. Council members should fully consider the risk they are subjecting their constituents to if they vote this ordinance down.

Thanks to all of you for devoting your time and talent to act in the best interests of our Village. All of us who are Silver Lake residents are counting on you to give this divisive matter your serious consideration, to protect the Lakes (our most valuable assets), and to ultimately act in the best interests of all residents of Silver Lake Village.

Respectfully submitted,

David M. Hunter / 3141 Silver Lake Boulevard

David M. Hunter
Attorney at Law



To: Village Council, Silver Lake Village

Ordinance No. 18-2020 Chapter 1169 Waterfront and Riparian Setback Development Standards

Ladies and Gentlemen:

Anticipating that the three minute limit on remarks at tomorrow evening's public hearing will be insufficient for me to cover all the aspects of this most important issue, I offer the following comments and ask that they be read into the meeting record. Where I have attributed statements or terms to an individual and placed them in quotations, those words have been drawn directly from the transcript of the May 25 meeting minutes.

On May 25, 2021 the Planning, Zoning and Insurance Committee of Council held a meeting to discuss the ordinance. At the end of the meeting, the three members, Chairman Nichols and members Plesich and Scott all voted to recommend to Council that the ordinance be either tabled indefinitely or voted down. They also recommended that a new ordinance be introduced that would remove the word "lakes" from the riparian chapter of the zoning code. The committee members announced their reasons for their opposition and I would like to take this opportunity to respond to those comments.

Chairman Nichols announced at the beginning of the meeting that he opposed this ordinance and that he would favor another ordinance that removes "lakes" from the riparian chapter in our code. Regarding this ordinance he cited four reasons for his opposition. The first was unfairness, a claim for which he cited the "watershed" map created for and distributed by the SLE board.

The Unfairness argument being propagated by the SLE board is a red herring that unfortunately distracts from the real issues at hand and sets up an "Us v. Them" dialog that fails to give sufficient credence to the excellent working relationship that has developed between the SLE board and the Village administration in the last few years. The board misrepresents this ordinance as a new imposition of restrictions on land owners rather than what it actually is: an adjustment to the present zoning chapter that dramatically reduces restrictions.

To be clear, the ordinance imposes no new restriction on anyone. Its science supported provisions correct the flaws of the existing code, making it easy to understand and enforce while being much less intrusive on private property. It reduces the width of the buffer from the present one, which can be as much as 175 feet (using a sliding scale related to the slope of the land), down to a uniform, unvarying width of 35 feet for groundplain disturbance and 70 feet for removal of mature, healthy trees. Furthermore, all existing lawful nonconforming uses of the land within the buffer are "grandfathered", so there is no impact on present land owners

(including the Silver Lake Estates) unless uses change. In fact many parcels will no longer have any buffer restrictions where adjacent trust property is wider than 70 feet.

The 7.5% “watershed” map that the board has presented is distorted and furthers the “Us versus Them” atmosphere where none exists. The watershed boundary shown on the board’s map bears no resemblance to the actual Silver Lake watershed. Specifically, it includes parts of six streets in the City of Stow that are served by Stow sewers, none of which discharge into Silver Lake. It also includes a mile-long stretch of Graham Rd which is served by sewers that discharge into the tributary of Mud Brook, not Silver Lake. And, most baffling of all, the map includes Crystal Lake in the Silver Lake watershed. Crystal Lake cannot flow into Silver Lake since its water level is three feet lower than that of Silver Lake. It, too, discharges into Mud Brook. That this misinformation has confused people is evidenced by the remarks of one lakeside property owner who, in the May 25 meeting, claimed that muddy water from “over by the country club” is discharged into Silver Lake through a pipe that runs through his property. In order for that to be true, that water would have to be pumped cross country for more than three quarters of a mile and raised at least thirty feet in elevation to get into that pipe. That simply isn’t happening.

The board’s map also distorts the impact of the buffer described by the ordinance. No parcel highlighted in District D (Mr. Nichols’ district, coincidentally) would be subject to the 35’ groundplain part of the buffer if this ordinance is adopted. As shown on the map, the 35 foot buffer is outside each of those properties, and only one or two of them might have mature trees within 70’ of the lake edge that would be subject to the provisions of the ordinance. Data presented on the map compares the area of residential lots bordering Silver Lake to the rest of the erroneously oversized “watershed.” But as mentioned above, the “watershed” identified by the board erroneously includes streets, the two lakes themselves, and other areas that aren’t properly part of the Silver Lake watershed. This distortion of the data greatly exaggerates the disparity between lakeside lots and other lots and, I think, confuses some residents into seeing themselves as victims when, in fact, they are the beneficiaries of a reduction in restrictions.

Mr. Nichols’ second point was enforcement. He claimed that from 2007 to 2019 the “record” indicates that the Village failed to enforce the riparian portion of the zoning code.

No evidence or “record” has been presented to support this claim. There are plenty of people who have repeated it in public meetings and I will freely admit that I mistakenly made a statement in the May 25 meeting that such claims were correct. I later realized that I was responding to the often repeated claim and that a check of planning commission records should be undertaken to either confirm or disprove the assertion. So, I reviewed the files for twelve properties adjacent to Silver Lake (some with more than one project) that have been brought before the planning commission over the period from 2008 to the present. I found no instance where approved plans violated the riparian ordinance. Similarly, I reviewed the files for four properties bordering Crystal Lake over the same time period and found no violations of the code

there either. Attached you will find a listing of those properties and the years they were considered by the planning commission.

Yes, there have been violations of the riparian by work undertaken without benefit of permit. One was the then Hopkins (now Lloyd) property which was never brought before the commission for review. Grading and wall construction occurred there, partially on Hopkins property and partially on trust property. It should be noted that Mr. Lubinski, then president of the SLE board, told me directly when I questioned him about it, that the board had authorized the Hopkins to build the sea wall and conduct grading activity on SLE trust property. The other unauthorized work that I am aware of is the stairway at the Smrekar residence, which was constructed without a permit. Planning Commission has since approved a plan with the homeowners that will remediate that disturbance by installing a series of dry wells on the hill to intercept stormwater and by planting riparian friendly grasses at the bottom of the steps. The authority for doing so resides in the existing riparian setback ordinance. The proposed replacement ordinance would provide similar protection, supporting the proposition that its enactment by Council would be in the best interest of the village and the lake.

Mr. Nichols' third point was that of interpretation. In that statement he acknowledged that the ordinance is clearer, more concise and more rational than the language it replaces but that if he wanted to remove a tree he would need an expert and maybe an attorney to help him figure it out.

Clearly that is an exaggeration. In fact, removal of mature, healthy trees within the buffer is concisely described in the Conditional Uses part of the ordinance and should not necessitate the assistance of an expert or lawyer to figure out. Here is a simple guide to determine if your tree is subject to the provisions of the proposed ordinance. Ask yourself these three questions and if the answer to any one of them is "no" then you're finished, your tree is not jurisdictional. Q1: Is the tree on my property located within 70 feet of either Silver Lake or Crystal Lake? If "yes" move to the next question. Q2: Is the tree on my property and within 70 feet of one of the lakes, 6" in diameter or larger? If "yes" move on to the last question. Q3: Is the tree on my property, within 70 feet of a lake and 6" in diameter or larger, healthy? (The ordinance tells you how to judge this but, of course, you may get a tree expert to assist you if you like) If this last answer is also "yes" then you will have to come to Planning Commission to get conditional approval to remove your tree. Otherwise no, your tree is not under the Village's jurisdiction.

Finally, Mr. Nichols believed that the "costs are too high for too little benefit". The "cost", he implied, was that approval of the ordinance would be in opposition to the desires of the SLE board, a "good partner in lake health". While stating that "a buffer is unquestionably a good thing for the lake" he judged that "benefit" to be "relatively little."

The relationship between the Village and the SLE board would seem to be a desirable, mutually beneficial one. Both entities profess to be working toward the same goal: the good health and safety of the lake. Each brings resources to that effort that fills in gaps that the other cannot cover. That partnership has functioned pretty well, in general, since the riparian ordinance was

adopted in 2007. An important resource that the Village possesses is its power to enforce its code by issuing citations, issuing stop work orders and levying fines. These tools can be employed quickly in reaction to imminent threats to the lake. The SLE board has no such power and must rely on persuasion or law suits. The other key element that the Village contributes to the effort is that its buffer, regulated by this ordinance, applies to the entire perimeter of the lake, no matter who owns the property. The SLE board, on the other hand, owns no property along approximately 30% of the lake periphery. In addition, it has ceded control of much of the rest of its property to adjacent residents (like Hopkins) so it has little command over the lake edge except for the park, the bird sanctuary and frontage adjacent to a dozen residential lots in the northeast quadrant of the lake. That amounts to less than 30% of the periphery.

It is puzzling now, as the Village moves toward fixing a problem with its code, that the SLE board would choose this moment to disband the collaborative relationship. Our “good partner in health” now characterizes the Village’s efforts as “outside interference” in Mr. Johnson’s words. Why the change? The board has never offered any objection to the provisions in the ordinance relative to the buffer or the science that supports it. In fact, Mr. Johnson has said privately and publicly that those provisions are entirely consistent with those that the board would include in its own rules (although it hasn’t so far). As well, the board has declined several times to offer insight into how the adoption of the ordinance would hinder its activities. Mr. Church asked the question directly during the May 25 meeting and the response he got from Mr. Johnson was a recitation of the standard litany: we spend a lot of money every year to keep the lake clean, the board has been doing this for 101 years and the trust put the board in charge of the lake. None of those points answer the question. When pressed further he responded, “I find the possible results of this legislation disconcerting.” Again, no explanation as to what the problem or the disconcerting “possible results” might be. He has frequently invoked the worrisome concept of “uncertainty” when speaking of the ordinance. This, of course, frightens some lake-adjacent property owners who then adopt that catch word as part of their opposition vocabulary. But there has been no explanation, from either the board or the residents, about what the “uncertainty” might refer to. These arguments are unsupported and hollow.

One is left to wonder, then, what the real motivator is for the board’s opposition. It seems that the only remaining possibility is that this is, for the board, a turf war. Mr. Morrison told us as much in one of the early Planning Commission meetings on the topic in 2019 when he stated that the trust property should not be subject to the village’s zoning code because it is private property. The board seeks full cessation from any oversight by the Village. If the Village is Rome, the board wants to be Vatican City; completely independent of the municipality in which it resides. The SLE board already owes no accountability to its members, as the trustees are appointed, not elected, and replacement trustees are appointed by the remaining board members. Now the board seeks to get rid of accountability to the Village, too. There would, then, be no constraints on decisions made by five unelected trustees that could affect all residents of the Village. We nearly saw this play out a dozen years ago when the board, at quite considerable cost, paid for full construction drawings, without first obtaining buy-in from SLE

membership, for renovations to the boathouse and beach that would have cost over a million dollars to construct. Many will recall that it was the Planning Commission, exercising its authority granted by the zoning code, that provided the last line of defense: first reviewing and then denying approval of the plans, putting an end to the project. If the trustees have their way, that last line of defense will no longer exist.

That incident also led to a lawsuit against the board by SLE members; a suit that the trustees lost. More could follow if the Village has no ability to limit irresponsible behavior. Village Council must consider very carefully the full repercussions of its decision before acceding to the SLE board's demand and abandoning its responsibility to protect its citizens.

Mr. Plesich, in his comments in opposition to the ordinance mentioned two things: the existing riparian code is too confusing and it has not been enforced. I have addressed both of those issues above but it seems to me an odd argument that one should reject the fix because the old model was defective. He also noted that he is in favor of removing the lakes from the ordinance but that he has reservations that doing so "creates an entirely new set of issues".

Mr. Scott announced that he was against this ordinance but in favor of the removal of the lakes from the riparian code. His comments were that he was a "private property rights guy", he acknowledged his agreement with the lack of enforcement argument and he agreed with the 7.5% unfairness argument. He also is shy about crossing the trustees. I believe I have addressed those issues above also.

Members of Council I ask that you make your decision on this critical piece of legislation based on facts. Filter out the unsubstantiated claims and outright misrepresentations that have been put forward by those who oppose this ordinance. The Planning Commission has worked long and hard on fashioning this ordinance in a way that protects our lakes while easing the impacts on land owners. The Planning Commission unanimously recommended it after conscientious and painstaking review and public participation over a fourteen month period of time. We are convinced that the ordinance provides protections for the waters of our lakes that the SLE board and the Crystal Lake board are not able to affect alone. We believe that good partnerships are the key to keeping these two amazing amenities within our village attractive and safe. Please protect those partnerships. We ask that you approve this ordinance as proposed.

Respectfully submitted,

Dennis C. Stoiber, Chair
Silver Lake Planning Commission

Attachment

Planning Commission Reviews - Residential Projects in the Riparian Setback areas of Silver Lake and Crystal Lake – 2008 to 2021

Silver Lake

2008 Bauer – 3111 Silver Lake Blvd. – New house

2009 Fiocca – 3017 Silver Lake Blvd. – New house with pool

2015 Haag - 2939 Silver Lake Blvd. – New house

2015 Taylor – 3133 Silver Lake Blvd. – Swimming pool

2015 Hopkins – 2875 Silver Lake Blvd. – New house

2016 Sanderson – 3173 Silver Lake Blvd. – House remodel with expanded pavement

2016 and **2020** Smrekar – 2990 Silverview Dr. – New house, site improvements

2018, 2019 and **2020** Marhofer – 3103 Silver Lake Blvd. – House remodel with expanded pavement, site remediation, patio overlook.

2018 Steere – 2986 Silverview Dr. – New house

2020 Hunter – 3141 Silver Lake Blvd. – Patio overlook

2020 and **2021** Schostak – 2960 Kent Rd. – Bee hives, deck

2020 to present Testa – 2879 Silver Lake Blvd. – New house

Crystal Lake

2008 Haag – 3046 Silver Lake Blvd. – New house

2013 Pollard – 3052 Silver Lake Blvd. – New house

2019 Stefanov – 1410 Crystal Lake Dr. - Shed

2019 to present Duffy – 3076 Silver Lake Blvd. – New house with pond

To: Village Council, Silver Lake Village
From: Jeff Heintz
Re: Waterfront Setback Legislation
Date: June 18, 2021

Ladies and Gentlemen:

First, I hope you're well, and that Silver Lake is emerging from the awful pandemic that crippled society as we knew it and cost us so much, most of all in terms of lives lost.

I've been asked to once again try and express why I think the waterfront setback legislation currently under your consideration is important to the future of the Village. At first, I demurred; we don't live in Silver Lake anymore, and it might (rightly) be viewed as presumptuous for a former resident to express an opinion on what is uniquely a Village matter. As I said when we left, however, Rose and I will always think of Silver Lake as home. I was on the Planning Commission for a long time and I worked on this legislation for more than two years, drafting, soliciting repeated public comment and input, and making changes based on dialog with residents. So I guess I feel like I still have skin in this game. In addition, since our move, I've observed a stark difference between how local government works in Ohio, as opposed to here in North Carolina. Here, there is very little "home rule" left. Much of what we all would consider matters of particular local interest have been pre-empted by state law, usually at the behest of some special interest group. This has confirmed to me the wisdom of proportionate, reasonable local regulation of local matters. The proposed waterfront setback ordinance is an example of this.

I looked back at the dialog that has gone on regarding this legislation, as I'm sure you have. There's no need to review it: you can re-read it easier than I could re-write it. But I was given a copy of the minutes of Council's May 25 Planning and Zoning Committee meeting, and in reading them I became concerned you are being asked to make your decision based on misinformation. To the extent I can, I'd like to try and correct several observations that were made at the May 25 meeting.

First, members of the Silver Lake Estates Board of Trustees stressed their authority to enact and enforce regulations regarding use of the lake and its shoreline. They also suggest they can, and routinely do take enforcement action independent of the Village. They suggest that because of this there is no need for the Village to exercise any authority over the Trust property. But their fundamental proposition is wrong. In the entire time I served on the Planning Commission, I know of no instance where the Trustees initiated any steps, legal or otherwise, to react against violation of their regulations without first complaining to the Village, and requesting that it step in. Thereafter, in every instance I'm aware of, the Trustees worked hand in glove with members of the administration and the Planning Commission to resolve the problem. And in those instances it was the prospect of enforcement *by the Village* of applicable law (including the existing riparian setback ordinance) that resulted in remedial activity by the offending property owners.

A lot was said at that meeting about the ability of the Trustees to file lawsuits against rule violations. To my knowledge, however, most of the lawsuits historically filed by the Trustees have been against Estates residents who don't pay their assessments. The one true example of the Trustees' appetite for litigation was the ill-fated "Trustees vs. Everyone" litigation that dragged on for several years back in the 2000's. Whatever you think about that lawsuit, it doesn't support Mr. Morrison's statement at the committee meeting that: "we don't want litigation with the people we live with and love." (If you remember, as I do, the way that lawsuit divided the Village and created hard feelings that linger to this day, the irony of that comment is just breathtaking.) It is true the current group of Estates Trustees have had success working informally with residents to remediate issues that jeopardize the lake, or are otherwise inconsistent with the Trustees' goals and objectives for its preservation and enhancement. But those are the same goals and objectives embodied in the proposed ordinance. It was extremely rewarding during my last years on the Planning Commission to work with the Trustees in resolving these kinds of problems and each of us had authority that was effective in achieving the mutually desired result. But make no mistake: the importance of the Village's ability to act quickly and decisively in the face of threats to the lake or the lakeshore cannot be overemphasized. It beats going to court any day.

What comes through the May 25 meeting minutes loud and clear is that at the end of the day, the Trustees don't like the proposed legislation because it subjects the trust property to oversight by the Village. Various arguments have been advanced in support of this, such as that the lake is "private property" and thus somehow immune from local law. Of course, that's a fantasy: private property everywhere has always been subject to regulation by local government: building codes establish construction standards and practices, zoning codes establish use districts and permissible activities within them, etc. The proposed waterfront setback ordinance is no different. In fact it's a significant moderation of the existing law. And, it's nothing new. The idea advanced by the Trustees that it is somehow a sudden and unprecedented imposition on their ability to manage the lake is simply not true.

The Trustees say they're good at what they do, have sound strategies for lake management and spend a lot of money on them. That's all true and they're to be applauded for it. But nothing in the proposed ordinance threatens any of that. And while the Trustees claim to be fearful that Village regulation over the lakeshore will somehow interfere with their work, they've never cited even one example of where this actually happened, even under the current, more restrictive riparian setback ordinance.

It is also said that the proposed ordinance unfairly burdens lakefront property, which is only a fraction of the Silver Lake watershed as a whole. That certainly sounds dramatic. And it would be misguided if the waterfront setback ordinance was the only measure the Village undertook to protect the lakes. But it's not: green technologies such as rain gardens and the like are being implemented into Silver Lake's roadway improvements to manage and filter surface water runoff. The Village enacted legislation to limit impervious lot coverage, and authorized downspout disconnects to rain barrels and dry wells. All these benefit Silver Lake, which is primarily fed by runoff, and we never heard "Government, leave us alone!" (Mr. Morrison, again, at a Planning Commission meeting earlier in the process) in connection with them. The property immediately abutting the lake is its last line of defense, and the Trustees realize that.

What they envision by way of lakeshore management largely parallels the ordinance and the two complement each other. (The Crystal Lake Directors, notably, unanimously support the proposed ordinance.)

The real unfairness here is the offhand way the Estates Trustees insist on their property being exempt from the proposed legislation, while in the same breath suggesting that lakeshore property not within the Estates be subject to it by way of some sort of “lakeside perimeter” (Mr. Morrison, at the Committee meeting). Think about that. The Trustees acknowledge outright the need for and appropriateness of the waterfront setback legislation and they want it to apply to property they don’t own and can’t control. But they want to exempt Trust property. Presumably that’s because they deem themselves capable of conscientious lakefront management, while the people down the road from them are not. That kind of arrogance is inconsistent with the Trustees I’ve worked with; hopefully they don’t really mean that. Either way, it’s a terrible idea and it would be arbitrary, and manifestly unfair to non-Estates lakefront property owners.

Citizens and private property are always subject to reasonable regulation by local government. The Garden Club performs yeoman service putting on the Festival and it has no trouble complying with County oversight of the electrical hookups. Planning Commission and Council spent considerable time on changing the zoning classification for the elementary school property, but no thought was ever given to simply exempting it from the ordinance entirely (nor did the Board of Education ever suggest that). This situation is no different. Happily, the Trust is now managed by trustees who collaborate with the Village. But it would be unwise for the Village to abdicate its responsibility to exercise consistent, proportionate land use oversight simply because the current trustees are cooperative and likable. To borrow a phrase from the financial services industry, “past performance is no guarantee of future results.”

Finally, I was disappointed to read the suggestion at the end of the meeting that Council bypass its lawful process and pre-emptively amend the ordinance in order to avoid an “unsafe situation” at the public hearing. First, contentious issues have come and gone in the Village for decades, without a hint that resolving them according to law would be unsafe. Second, there is little dispute about the importance of protecting the lakes and their shorelines. While the Trustees oppose enactment of the ordinance, they acknowledge its intent matches squarely with their view of how Silver Lake should be protected. Most importantly, throughout this process the various sides have disagreed without being disagreeable. Don’t let fearmongering deter you from the due process of your deliberations, whatever your decision might be.

Thank you for the opportunity to share my thoughts. As always, Rose and I wish the best for Silver Lake and its residents. JTH

Jeffrey T. Heintz
Attorney at Law

