

REGULAR MINUTES OF THE PLANNING AND ZONING COMMISSION

Monday, February 11, 2019 6:00 p.m.

At 6 p.m., Chairman Heintz called the meeting to order and asked for a roll call of the Commission.

The following members were present and responded to roll call: Mr. Stoiber, Mr. Brown, Mr. Heintz, Mr. Ciraldo, and Mr. Lapolla.

Roll call of the Commission: All members present

Others in attendance: Bob Heydorn, Solicitor
Bob Gray, Resident
Suzanne Lipan, Administrative Assistant

Mr. Heintz said first item on the agenda for tonight is the ordinance that has been referred to us by Village Council amending Section 1113.103 that is the zoning code of the Village of Silver Lake to rezone sublots 249 through 258 at the Silver Lake Estates subdivision from institutional to residential.

This is the one that came up a few meetings ago where Council is undertaking to rezone those properties, given when the property was conveyed from 1994. Single family is the principal designation of all of the areas in the Village.

I thought it prudent to look at the title report because over the years I heard that there might be one or more reverter clauses in the conveyance from the Silver Lake Board of Education to the Cuyahoga Falls Board of Education. That would be triggered by either a change in the zoning, ownership, or by abandonment by the Cuyahoga Falls Board of Education as a school operating facility here in Silver Lake.

As a result of that, Council has engaged to do a title search in which a copy was delivered from Tim Wigley. I looked at the title search and had a couple of questions for him. He answered them and he has assured me that there are no such reverter clauses and that otherwise the proposed action by the Council makes a lot of sense. I would entertain a motion that we report back to Village Council as is our charge under the charter that we have reviewed the proposed legislation that we recommend that they adopt.

Mr. Ciraldo asked who the actual owner of the property is.

Mr. Heintz said the Cuyahoga Falls Board of Education is the owner. That occurred when the Silver Lake local School District merged into the Cuyahoga Falls Board of Education and Silver Lake became one of the elementary schools in the Cuyahoga Falls District.

Mr. Ciraldo asked who can sell the property.

Mr. Heintz said the Cuyahoga Falls Board of Education can because that's who owns it now.

Mr. Stoiber asked if there were any other ancillary considerations.

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Mr. Ciraldo made a motion to recommend to Council to change the zoning.

Mr. Stoiber seconded the motion.

Mr. Heinz said having had a motion and a second, is there any discussion.

Mr. Heydorn said he is unsure if this discussion would fall under his role as the law director or his role as citizen. He said there are couple of things he would like you to know and consider.

The first thing that crossed my mind was that the proposal seems logical. Then I wondered why we're doing it now. Everyone is acting like that school is going to be abandoned and maybe everyone wants it to be. The last thing we heard from the school board was that if they decide to close the school, price is number one and Silver Lake is number two.

No one has come to a decision that I know of, that they are going to close the school. If you zone this residential, you are adding an incredible amount of value to this property. Right now, zoned institutional, the only thing you can put there is a public school, a church, or a government building.

I think that doesn't make that property very valuable on the general market. If you switch to residential, you add a lot of value. If I was the school board searching for money because I'm financial strapped, I would be really trying to get rid of that school and sell it as a residential development.

Here is the second thing that needs to be considered by somebody who really thinks about this, is that all of those lots as I've seen except one, are non-conforming for residential purposes. They are all too small. If you change it to residential without re-platting this, you're setting up the people who are going to come in here with non-conforming lots. You'll end up with a bunch of little houses and lots that don't meet zoning requirements.

What you want to do in a situation like this is to encourage a developer to come in and buy all the lots, re-plat it and build homes that should be built there. What you don't do is you don't re-zone it before that happens. You don't zone it upfront because then anybody could come in and buy one lot and put one little house on that lot.

Is that in the best interest of the Village? Both of these analysis come down to one point, what's the rush. It would give the school board greater desire to get rid of the school, as well as a zoning headache with a bunch of small lots.

Mr. Stoiber asked if that was an argument to make to Council and not to the Planning Commission.

Mr. Heydorn said we have used the Planning Commission for all of these years as a giant building department that passes on all sorts of things like rules for putting up sideline restrictions, but planning commissions historically, in places that actually have land development that we do not have, and in other towns I have been in, that is their major function.

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Their major function was planning the best course of action for the land and seeing how the development of the town goes. That is why it goes to the Planning Commission.

When you think about it, you say to leave that up to Council, but why do you think they gave it to the Planning Commission in the first place? Somebody is supposed to have the expertise in order to figure out what is the best course of land development for the future of the Village.

Usually the Planning Commission is not involved in the building decisions because that's left up to the building departments. Because the Village has no land development issues, the Planning Commission has never had to fill their actual traditional role. This is absolutely designed for the Planning Commission, but we've never had the opportunity. You are supposed to look at these things and say 'what is in the best interest of the Village'. You are supposed to determine that and make a policy decision.

Mr. Brown asked when the school was started.

Mr. Heydorn said it was built in 1927 or 1928.

Mr. Brown asked prior to that, was it residential or not?

Mr. Heydorn said prior to that I don't believe we had a zoning code and was built along with all of the other estate lots in 1918.

Mr. Brown asked if all of these lots are now non-conforming.

Mr. Heintz said they would be if they were residential lots which they're not.

Mr. Stoiber said he was looking at some of these dimensions on this paper and it looks like they're 162 foot deep.

Mr. Heydorn said the lot minimum, under the current code, is 20,000 square feet and we knew we were making practically 3/4 of the lots in Silver Lake non-conforming. Then we changed it to non-conforming rule so that we could facilitate some changes. For instance, we allowed changes to non-conforming uses as long as they were in the direction of conforming use. That is kind of a hybrid rule we developed for Silver Lake.

Mr. Heintz asked Mr. Heydorn to table this for a minute and move onto Mr. Gray's application.

Mrs. Lipan said Mr. Gray was a member of Village Council for many years.

Mr. Gray said he didn't mind, he finds this topic interesting.

Mr. Ciraldo asked if this has this been aggregated as one lot.

Mr. Heintz said no.

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Mr. Heydorn said it is under common ownership. In the zoning code, if it is under common ownership, it is considered one lot.

Mr. Heintz said for development purposes, we would need to either re-subdivide it or try to develop it based on the original lots.

Mr. Heydorn said individual people could buy the lots off of the school board.

Mr. Heintz said yes.

Mr. Ciraldo said they would still have to demo and rebuild though.

Mr. Stoiber said he understands what Mr. Heydorn is saying about the fact that these lots would not conform to our present zoning, but at the same time, you are saying 3/4 of the lot in the Village would not conform to our present zoning.

Mr. Heintz said they wouldn't be non-conforming uses, they would be non-conforming lots. There is no use there now.

Mr. Stoiber asked if they could obtain a variance.

Mr. Heydorn said you could handle that one by one, grant variances, but what you are doing is encouraging something that is against the intent of the rezoning.

Mr. Heintz asked if Mr. Heydorn spoke with Council about this.

Mr. Heydorn said that Council gave it one reading and sent it to Planning Commission, and that's it. There has been no opportunity to discuss it with Council. Secondly, quite frankly, my honest opinion is, I don't think Council is able to handle this.

Council should be relying on your recommendations because you're the ones that are supposedly the experts in this field. And that is your job. When they get it they will look at it and say, well one particular guy wants it because he lives across from the playground, and that's why it came up in the first place. And why are you choosing to do this now long before the school is abandoned. Why now? The reason is *(not audible - time 46.06)*.

Mr. Heintz asked you if you have talked to Council and I take it the answer is not yet.

Mr. Heydorn said no, although we've tried, but not officially.

Mr. Stoiber said I understand all of that is relative to them not being conforming to our present zoning and yet 3/4 of the houses surrounding are not. My thought is if this were rezoned and made to conform, those houses would be significantly different in tone and density. He said that is something we should consider.

Mr. Ciraldo said residential.

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Mr. Heintz said I don't know if that is the case. The lots across from Millboro for example are not significantly larger than the property to be rezoned. The houses that would be built there would be similar in character to those on the west side. The policy of the Village as articulated in the Zoning Ordinance that was adopted in 1994 was to cause there to be larger lots to the extent that new lots would be created.

Recognizing that the lots in the Village largely don't meet the new dimensions, provision was made for a relaxed consideration of the circumstances under which one may expand a lawfully non-conform use. The problem with these lots is, if somebody were to tear their house down, they could rebuild it in the current format or maybe even a little bit bigger, because he has a pre-existing lawfully non-conforming use. There are no pre-existing lawfully non-conforming uses.

Mr. Stoiber said that you are saying from a legal standpoint, from a use of the land and an identity of the neighborhood, what you are doing is creating large lots and surrounded by other lots. Then the identity of that neighborhood changes.

Mr. Heintz said a competing consideration to the one he's articulating is if one says they don't want a mansion across the street because it is going to look significantly different, then don't make those lots bigger and let them be the way they are. My response to that would be lets cross that bridge when we get to it, because why are we doing this in the abstract now as much as the whole thing is up in the air.

Mr. Stoiber said there is another consideration and we should take the time to look at it. I totally agree with Mr. Heydorn that if we are supposed to be the experts and you have brought up some stuff that I never thought of, then we aren't taking the time to consider and make a responsible decision.

Mr. Heydorn said I don't think anybody is going to say to you, that you have to follow a 30 day rule and Council is not going to take it from you. He said when those lots are sold and rezoned because there is not a house currently on them, they are not allowed to build on those lots. Unless they come and get variances for all of those things. Remember each one of those lots are going to go through the variance procedure that is what the zoning code is asking for. He said what you are doing now is questioning what is in the best interest of the Village.

Mr. Lapolla said from my perspective, I'm not eager to rush into this decision. I would love to see a school there, but also living across the street I see a school that has no investment and is in rough shape. We can wait on them to decide on what to do with the school, but I got part of the original reason this got brought up was because we didn't want some other institutional facility taking over that sight and I don't think that would happen.

Mr. Ciraldo said in a world of possibilities, it's an institutional lot.

Mr. Heydorn said I agree, what are the chances you have some giant church that wants to come in.

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Mr. Heintz said the Ohio Revised Code now requires that when a public school district closes a public school, it must offer that facility to the charter schools for consideration. Would you like to have a charter school there? I think Mr. Heydorn has a point. I don't think I would be comfortable with the idea that we find out the schools going to be closing and there's a contract between Cuyahoga Falls Board of Education and somebody to divide that property and then we run into a new zoning problem of that property.

The likelihood of that is less of a consideration to me, than the possibility that we may be rushing off to do this without adequately considering some of these implications that Mr. Heydorn brought up.

Mr. Heydorn said he agrees.

Mr. Heintz said, demographically, the population of the Village is getting younger and so the justification for closing the school is going to diminish. What I would propose we do is that you (*meaning Mr. Heydorn*) get Council to wave the 30-day requirement that we have to consider these things so that we have a lawful trail for the extended period of time to look at this.

Mr. Stoiber said this leads us to a number of questions that we don't feel we can resolve within the 30 days and we can recommend that the time be stopped.

Mr. Ciraldo said we're in discussion and we grew to review the request, like Mr. Heydorn said, there are additional items that we need some additional time to make some decisions. We need to discuss what all of the ramifications are and to vest the many different opportunities that occur from this piece of property.

Mr. Heintz said I am not comfortable with us just ignoring the provision of charter saying we have 30 days to do so. We might be beyond that already and that needs to be remediated somehow. Then we can make this an agenda item as we sort through the considerations.

Mr. Heydorn said let's remember they (*Council*) tabled this legislation before your report comes back.

Mr. Heintz said the charter says 30 days. You want someone to come in two years from now and ask about the report from the Planning Commission which is now void because they had 30 days to complete it.

Mr. Ciraldo said I'd rather to do it right.

Mr. Heydorn said that you should make the request.

Mr. Heintz said he would make the request.

Mr. Ciraldo made a motion to withdraw his motion to recommend to Council to change the zoning.

Mr. Stoiber withdrew his motion.

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Mr. Heintz said I will make a request in writing or by email to the Mayor asking for the deadline under which we hold that in abeyance for a period of 180 days while we consider some of the ramifications because the other aspect of this, is that this is really the traditional roll of the Planning Commission. For the first time in many years that I've been on Planning Commission, we have that function to perform.

Mr. Heydorn said in 1994, when the zoning code was adopted, you were doing the traditional role of the Planning Commission.

So the Planning Commission, like Council, will table this pending action by Council giving us a broader window of opportunity to consider. In addition to tabling it we will also have it on the agenda next meeting.

Mr. Ciraldo said there are other areas of the Village that could require this kind of consideration.

Mr. Heintz said the Planning Commission should consider meeting in a work session to discuss these issues.

The Planning Commission members agreed to meeting for a work session.

Mr. Stoiber asked if this will be discussed at subsequent meetings until we have come to a conclusion.

Mr. Heintz said yes it should be on all subsequent meetings for discussion.

Mr. Ciraldo made a motion to table this matter pending Council's approval to extend the time period to act upon Ordinance 80-2018.

Mr. Stoiber seconded the motion.

Mr. Brown, Mr. Heintz, and Mr. Lapolla signified their approval by saying aye.

Mr. Heintz moved on with the remaining agenda.

Plan No.: 2018-38 Mr. Bill Steere, 2986 Silverview Dr, Lot 11, Silverview Estates Reallotment.

Application to demolish existing house to rebuild a new house.

Tabled at the December 11, 2018, planning meeting for further information.

Tabled at the January 8, 2019, planning meeting pending a legal opinion from Mr. Heydorn regarding the riparian setback issue for a proposed expansion.

Mr. Heintz said we have Mr. Heydorn's report on Mr. Steer's application. Planning said the applicants prepared plan, with respect to encroachment into the riparian setback, in that it will not be greater than 15 percent of what is already there as a lawful non-conforming use under Section 1169.07.

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Mr. Heydorn recommends that we delete that and substitute in its place as follows: The Commission finds that the proposed expansion of the subject residential use into the riparian setback is a permissible expansion under Section 1169.07 (C 3) of the Zoning Code. Mr. Heintz said he would propose that the Planning Commission follows this.

Mr. Heintz asked for a motion.

Mr. Lapolla made a motion to substitute Mr. Heydorn's wording.

Mr. Brown seconded the motion.

Mr. Heintz asks if there is any further discussion on this subject.

There being none, Mr. Ciraldo and Mr. Stoiber signified their approval by saying aye.

Mr. Heintz abstained from vote. (Mr. Heintz's law firm represents Mr. Steere.)

Plan No.: 2019-02 Mr. and Mrs. Robert/Nancy Gray, 3070 Orchard Rd, Lot #353, Silver Lake Estates.

Mr. Heintz asked Mr. Gray where the gazebo will be placed.

Mr. Gray said the gazebo will be on the concrete patio so that he can leave his furniture under there and not store it in the garage.

Mr. Heintz said it is clear you are within all of the parameters.

There being no further discussion, Mr. Heintz asked for a motion.

Mr. Stoiber made a motion to approve this application.

Mr. Lapolla seconded the motion.

Mr. Heintz asked if there was any further discussion.

There being no further discussion, all members in favor said aye. No members were opposed.

Plan No.: 2019-02 is approved.

Mr. Stoiber said the Planning Commission should discuss the applicability of setback delineation requirements relative to lakeside properties.

One of these issues was proposed construction within the riparian setback as delineated by staff at the Summit Soil & Water Conservation District.

Also, the applicability of the setback width criteria when applied to a lake rather than a stream or river as initially addressed in the Summit County riparian setback code from which our code section as borrowed.

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It is possible that the relatively still waters of the lake, even during storm events, represent a condition that is significantly different than the erosion-including river currents that would make for a different approach to the buffering requirements that we have.

Our code should be thoroughly reviewed.

We should have a definition section that would explain uses, etc.

Mr. Stoiber went on to say we should get rid of the application where it does not really apply. Once we do that there are still some nuts and bolts that need to be cleaned up in that section.

Mr. Heintz asked if Mr. Stoiber was volunteering to take a stab at that.

Mr. Stoiber said sure.

Mr. Heintz said excellent.


Mr. Stoiber said he would not write the whole definition section, I'll go to another municipality and review theirs.

Mr. Brown asked what the elevation of the spillway in Silver Lake is.

Mr. Stoiber said he has a map that has elevations, he will check that and let you know.

Mr. Heintz told the Commission that he wished Mr. Heydorn had stayed for the remainder of the meeting, because he wanted to let him know that, in reference to the school issue, that was a good catch. Land development is an issue the Planning should take up.

There being no further discussion, the meeting was adjourned at 7:07 p.m.


Mr. Jeff Heintz
Chairman