

Meeting Minutes of the Planning Commission - Monday, June 10, 2019, at 7:00 p.m.

Planning Members Present: Stoiber, Ciraldo, Brown, Lapolla, Heintz
Others in attendance: Suzanne Lipan, Administrative Assistant
Robert Heydorn, Village Solicitor
See attached sign-in sheet for others in attendance.

Call to Order

Mr. Heintz, Chairman called the meeting to order and asked for a roll call of members. All members were present.

Approval of Minutes

There being no additions or corrections, the minutes of January 8th, 2019, April 8th, 2019, and April 22nd, 2019, Planning Commission Meeting were approved as submitted.

Commission Discussion***Plan No.: 2019-08 Mr. & Mrs. Rick (Kelly) Trefny, 2822 Lee Road, Lot #452, Silver Lake Estates.***

Application to install a stamped concrete patio. The area will be 466 square feet.

Mr. Stoiber said the MIC worksheet was submitted. He visited the property and there are no issues.

The Commission reviewed the application and had no questions or issues. There being no further discussion, Mr. Stoiber made a motion to approve the application. Mr. Brown seconded and the motion was unanimously approved.

Plan No.: 2019-09 Dr. Ann Marie Hipsley, 2941 Kent Road, Lot #13.

Application to erect a 30' x 26' (780 square feet) detached garage.

1. The proposed garage encroaches on the sideline setback for corner lots.
2. Exceeds the height requirement of 15 feet.
3. The combined square footage of both accessory building on this lot exceeds 500 square feet.

NOTE: Per agreement with the Mayor and Solicitor, the garage must be built no later than December 31, 2019. A site plan needed to be submitted to the Planning Commission for review and referral to the Board of Zoning Appeals no later than Monday, June 10, 2019.

Mrs. Lipan informed the Commission the reason no one was in attendance for this application was because Dr. Hipsley is out of the country and her contractor is an hour drive away.

Meeting Minutes of the Planning Commission - Monday, June 10, 2019, at 7:00 p.m.

Mr. Heinz said since the proposed garage requires variances, the applicant will need to go before the Board of Zoning Appeals for approval. If approved, the applicant will come before the Commission for final approval.

Mr. Stoiber made a motion to deny Plan No.: 2019-09 and refer it to the Board of Zoning Appeals. Mr. Lapolla seconded and the motion was unanimously approved.

Discussion: Chapter 1169 Riparian

Mr. Heintz said it is not my expectation that the Planning Commission is going to take any action on this tonight. The ordinance was enacted in 2007 and it rises out of a concern that there is an increasing level of concern with respect to the condition of Silver Lake and Crystal Lake, and the potential for impairment of those two bodies of water as a result of either surface runoff or contamination from fertilizer applied to lawns, the larger volume of storm water run-off that we have experienced as a result of development in Stow and elsewhere upstream from the Village.

In late 2018 and early 2019, a property on Silverview was purchased to demolish and rebuild. A very detailed set of plans was submitted for their project. It came to our attention and to his attention and the attention of his design professionals that a literal read of the riparian setback ordinance would, in the view of some people, render that lot un-buildable in that the setback would extend so far back from the lake shore that they wouldn't be able to commence construction of the house in a building envelope that would be outside of the setback as it ran in Silver Lake and inside the setback as it runs from Silverview Drive. A result that no one foresaw and a result that I don't think anyone intended at the time the ordinance was considered and adopted.

Mr. Heydorn said his position is to protect the Lakes.

Mr. Heintz said the ordinance did not exist at the time many of you bought your houses or performed improvements to your houses and your properties. The provisions of the ordinance is that it establishes setbacks from the Lake shore or any other requirements. The original ordinance has no effect because your property is what's known in the law as a pre-existing lawful non-conforming use, non-conforming in the sense that it doesn't conform with the law as it's currently in effect, but because it's pre-existing, your use preceded, in time, the adoption of the ordinance, its provisions don't apply to your property to the extent that you change your property after the adoption of an ordinance that governs it. Then there may be implications of that new law that would apply to the improvement that you made. In the event that your property is one of those sold to a new owner, demolished and a new project is undertaken, then the provisions of the new ordinance would apply to the new construction. As we sit here today, none of you have property that is currently implicated by the existing ordinance nor would it necessarily be implicated by any changes that the Village makes.

Mr. Heintz then asked for comments from persons in attendance and a general discussion ensued.

Mr. Handleman asked how this will impact his property.

Meeting Minutes of the Planning Commission - Monday, June 10, 2019, at 7:00 p.m.

Mr. Stoiber said if something is existing, a new restriction is placed upon that property. The existing facility is an existing non-conforming legal use because it predated this new restriction. If someone wants to tear down and build a new or add on, then they are bound by the new restrictions.

Mr. Heintz said a good word here is "grandfather." Pre-existing property is your grandfather into compliance with whatever the new law is. As a general rule, your property is your grandfather to the extent that changes are made, that if it were being built tomorrow, you would have to comply with. But because it was built yesterday, you don't. And to the extent that your property is sold to a third party, a new owner, in that same condition, they are not required to take any steps to bring that property into compliance with the new law. They get the benefit of it being grandfathered under the old law.

Jeff Sanderson read that the ordinance talks about construction and vegetation.

Mr. Heintz said there are prohibited activities within the riparian setback. Some of them include disturbing pre-existing vegetation, the theory being that we want to diminish the possibility of erosion into the lake. There are restrictions on removal of trees other than trees that are dead or diseased. That's all part of the ordinance that's been on the books since 2007.

Mr. Stoiber said the Summit County ordinance, which applied to the local streams and rivers was adopted into the Village, the lakes were added, but there was no change made in the metrics of how to define the setback to recognize the fact that ponds and lakes are much different than rivers and streams.

Discussion ensued regarding water fowl and keeping the populations under control.

Discussion ensued regarding buffers in other communities.

Mr. McDermott read a quote from river.org website that confirms that a buffer zone will keep the aquatic life healthy, keep water clean, manage storm water and keep soil from eroding. Then asked who pays for the removal of non-needed plants? Who pays for the removal of the current lawns? Who pays for the area to be prepped? Who pays for the new plants and grasses? Who pays for the watering the plants until they can survive on their own? Who pays for the future maintenance program including labor? Buffer zones have to be maintained and be managed. I just ask that we not be guilty of a major mistake and then pay the price in the future.

Jack Morrison said he just recently learned that your riparian ordinance includes Crystal Lake and Silver Lake. Lakes are not riparian, only streams and rivers are and putting the lakes into the riparian ordinance, should not have occurred. Also, Silver Lake is a privately-owned lake and the trustees own a significant strip of land around about 75 percent of the lake. The trustees do enforce regulations relative to that buffer. People that live on the lake have been required to move their sheds off of the trust property onto their own property. They've been told they cannot build docks on the trust property into the water. They're not allowed to put gazebos on trust property. When trees go down because lightning strikes them or they die, the trust incurs the money to go and clean up the perimeter of the lake. The trust also put in an irrigation system that the resident of the estates paid for. We do all of these things to maintain a private lake while at the same time permitting Silver Lake Village to dump thousands upon thousands of gallons of storm water runoff into the

Meeting Minutes of the Planning Commission - Monday, June 10, 2019, at 7:00 p.m.

lake. That includes all of the runoff of oil and gasoline on the highways, and all the fertilizer of every yard in Silver Lake as it runs down the street and into the storm sewer. What we're talking about is a buffer zone that will manage the 50 or so properties around the perimeter of the lake to reduce the runoff while we increase the runoff from the rest of the Village into the lake property. I don't know how the government gets in the middle of managing the perimeter of a private lake. I don't know how the government does that they can better manage the perimeter of the lake than the trustees have already done. I know that there are some serious concerns about the definition of riparian and an application of legislation that effectively takes over control of the perimeter of the lake which is owned by the trustees. This impacts all the property owners who have land that abuts the lake. This impacts all the residents of Silver Lake because all of their overflow is directed into the lake with the permission of the trustees. The trustees could have said no, you're not going to dump your storm water into the lake. The trustees didn't do that as they looked at Silver Lake as a friend. I think it's time that Silver Lake remove the lakes from the riparian ordinance. I think it's time that Silver Lake allow the trustees to manage the perimeter of their property.

Bryan Taylor asked if anything has been done to educate people who don't live on the lake on what they should not be using and why the burden falls on 50 homes. Liquid fertilizers are one of the number one runoff and I see their trucks every single day in Silver Lake. He said if it rains that day or next day and it's all going in the lake, but somehow the burden is on the 50 home owners.

Mr. Stoiber said years ago the administration brought a fertilizer piece of legislation to Council and they did not pass it.

Mr. Heintz said these lakes are the biggest assets that the Village has. And, it behooves all of us to protect them because as valuable as our properties are now, largely that's because of the wonderful environment that we live in.

Mike Walker spoke about the testing of lake as it pertains to water quality.

Discussion on the implication of a new riparian ordinance, the residents it would affect and keeping them up to date on what is happening.

Mr. Heintz said every communication that is made is a public record.

Discussion on the amount of storm water that runs into Silver Lake.

Mr. Morrison said back in 2007, when you passed the riparian ordinance, I was the law director of Munroe Falls. The 2007 ordinance that you passed is not unique to Silver Lake. Summit County imposed a cram-down on all of the villages and cities within Summit County to adopt, voluntarily, the County's riparian ordinance, which the village did. In Munroe Falls, they have three lakes, and there was an effort by the County to have those three lakes included in the riparian ordinance. Munroe Falls refused to do that because the lakes did not qualify as riparian. Silver Lake agreed to include Silver Lake and Crystal Lake, even though they're not riparian. I certainly have no objection to riparian ordinance, because there are riparian areas in Silver Lake. The river, the stream bed behind your house, but the lake does not belong in that. I think the first move and the best move is to get the lakes out of riparian ordinance. As a lawyer, if I looked at a riparian

Meeting Minutes of the Planning Commission - Monday, June 10, 2019, at 7:00 p.m.

ordinance, I would never think to dig deep in the ordinance to see if Crystal Lake and Silver Lake were included, because by definition they're not riparian.

Mr. Heintz said I was on Planning Commission and I can attest to the fact that the consideration of the ordinance was undertaken by the Planning Commission as it's required by the Village Charter. I can attest to you that it was done in compliance with the open meeting and open records laws that govern our operations. I can attest to you that it was recommended to Council by a vote that was recorded and made and publicly available. I can suggest to you that those same sorts of hoops were jumped through by Village Council when it adopted the Ordinance. It's not necessarily possible or convenient for every resident to scrutinize the Village website and the legal ads every week to see what items of interest might be on Council's agenda. I do believe that citizens have a responsibility to familiarize themselves with their government and what their government is undertaking to do and so somewhere is the obligation of the government to disclose and the responsibility that will come to the residents to familiarize themselves.

Mr. Heydorn said number one, there are all sorts of restrictions that apply to a homeowner that you wouldn't know unless you did more research than appears on any record, and that's called the zoning code. Unless you know it, you wouldn't know what your rights are unless you know the zoning code, and that is the way it is and the way it's been in this country since 1912. A zoning ordinance is passed only if the Planning Commission has had an opportunity to come and go through their series of hearings. Then it cannot be passed as an emergency or with the suspension of the rules. It must have three separate readings at three separate Council meetings and all that has to be advertised in the paper. It also cannot be passed unless there's a public hearing. There was a public hearing on this, which was advertised in the paper. The problem is I've been a law director for 43 years in four different communities, and I can tell you that some of these public hearings are certainly the liveliest things I've ever seen. In most cases, in all communities I've been in, there are people at every Council meeting. At our Council meetings, we have two people that show up.

It was suggested that mass emails or other means to keep residents informed.

Mr. Heintz said the administration may have the ability to create a list so that we can periodically give notice of meetings like this. I do feel strongly that the burden of being informed as a citizen is on the citizen to be informed. It's important to reach out and affirmatively seek to acquire this information. If you were to call Mrs. Lipan in the office and ask her what's going on with the Riparian Ordinance, she'll tell you.

Fred Johnson said he is a trustee for Silver Lake Estates. We established early on some values for trustees a couple of years ago. Those being safety of our guests, fiscal and environmental responsibility, and being true to the trust. We're here for all three of those reasons tonight. As to publicly making people aware of lake conditions, Mike spoke of the six tests that we've committed to this year. In addition to that, we've committed to another survey of invasive plants for the lake. All of those results are publicly posted at the boathouse, and as we continue to grow our website, will be posted on our website for any and all to see. This is a collaborative effort. Trustees are committed to that process and communicating about that process. We have spent, on behalf of the citizens, the kind of money that Mike has talked about this evening. A million dollars of the public's money. We haven't done that based on any mandate. We've done it simply based on doing the right

Meeting Minutes of the Planning Commission - Monday, June 10, 2019, at 7:00 p.m.

thing. He said we've been spending the people's money, those who send their checks dutifully each and every year. We are committed to this process, and in terms of the public profile, we meet publicly six times a year. Those meetings are posted. The information with regard to water quality will be posted at the boathouse. In addition to those six tests Mike talked about, in the interest in the safety of our guests, we test water quality every single Monday to make sure we can fly the green flag on the lake properly so that moms and dads are convinced that their kids will be safe when they go in the water. We want to and we are pledging to work together on this issue.

Mr. Heintz said you have my pledge as the chair of this commission, to join with you in this collaborative effort, because I think it is important.

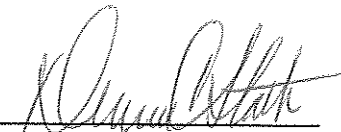
Discussion regarding similar cities who have gone through this process. One is Buckeye Lake and one is Mentor Lake which is essentially Lake Erie.

Al Lloyd asked if the riparian ordinance was enacted in error. Riparian is the Latin word meaning river.

Mr. Heydorn said Dan Markowitz, who is a member Crystal Lake, was here the other day and he found the definition of riparian includes lakes. The question is, what was the purpose of the ordinance? If you look in the beginning of our riparian ordinance that's in here, it's a modified ordinance. It says that one of the purposes is to reduce erosion. The other purpose is to stop pollution of chemicals. The fact of the matter is, unless we are taking away substantial economic rights from property owners, and unless there's no legitimate purpose to what we're doing, then it's constitutional. He said changing the name of this ordinance to buffer legislation here. We can call it buffer legislation. Strike the word riparian, call it buffer.

Mr. Heintz said the trick here is communication and openness.

There being no further business to come before the Planning Commission, Mr. Heintz thanked those in attendance for their thoughtful, civil and productive participation in this revision process, and the meeting was adjourned at **8:10 p.m.**



fo Jeff Heintz
Chairman