

Thursday, August 15, 2019, at 7:30 a.m.

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Planning Members Present: Stoiber, Ciraldo, Brown, Lapolla, Heintz

Others in attendance: Suzanne Lipan, Administrative Assistant  
Mayor Hovey  
See attached sign-in sheet for others in attendance.

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**Call to Order**

Mr. Heintz, Chairman called the work session to order. All members were present.

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**Commission Discussion - Riparian**

Mr. Heintz - We've been working on this issue regarding the setbacks on the properties that border Silver Lake and Crystal Lake and other waterway areas in the Village. A month or so ago there was circulated a proposed, revised ordinance that dealt specifically with the lakefront properties; revising what is currently in the Zoning Code as the Riparian Setback Ordinance. Mr. Heydorn, the Village Solicitor, let me know yesterday he cannot attend today.

Mr. Heintz said what I would like today is for members of the Planning Commission, who have yet to weigh in on it to do that. Then members of the public, whether here or not, weigh in to see if we can further the process.

Mr. Brian Lapolla - I think one of our challenges right now is how do we have the Waterfront Setback with the lakes while still incorporating language for the Riparian Setback for lakes and streams? We have to somehow carry both, and I'm not sure that this on its own covers it because there are some Riparian considerations that we need to include.

Mr. Heintz - That's a comment that I've heard repeatedly including from Mr. Heydorn and Mr. Stoiber. I agree that there are considerations that drove the anatomy of the Riparian Setback Ordinance in the first place in terms of protecting against erosion and pollution from the streams that run through the lake. Those considerations are separate from those that relate to the lakefront properties. It seems to me that it would be possible to drop the Riparian Setback provisions back into the ordinance as it relates solely to streams and the Cuyahoga River. Now I'll give you a disclaimer on that. We have to think through the implications of what that Riparian Setback would be on properties like ours, where we're overlooking an intermittently running stream that would be a Riparian area; that would trigger the Riparian Setback. In the event that we were to sell our house and somebody were to tear it down and rebuild on the lot, we would have to make sure that they would be able to do that.

Mr. Lapolla - We still have two different topics, two different codes - one riparian and one lake setbacks.

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Mr. Fred Johnson said I tend to agree we need some language with the streams part of it, some part of with the lakes. As far as to the impact to the lake and the run off that goes into the lake from the boarding areas, the matter of stormwater management should stay out of it because it's really an engineering solution and it has to be done in a larger setting.

Mr. Lapolla said there is a lot of feedback that we've received that lakes should not be part of the Riparian Code. By having the Waterfront Setback for the lakes and Riparian for streams and running water, that might help satisfy everybody's concern there. We're not willing to concede just pulling setback completely out from the lakes of our Code by eliminating from Riparian only. We have to insert some sort of waterfront setback, which is what I think this does pretty well.

Mr. Don Brown said he has nothing to add and we've talked about this. I agree with what Brian says. I would just move forward with what we've discussed in the past.

Mr. Denny Stoiber -I agree with what the other folks here have said. Mr. Heintz said you share the belief of Mr. Lapolla and Mr. Heydorn that we should retain the more formulaic setback calculations for the streams and the river.

Mr. Stoiber - Yes and I think those are based upon science, studies, a lot of work by a lot of agencies. I think they are valid but that is not to say that we might not be able to build some flexibility into that.

Mr. Heintz said the one overarching principle that I hope we have established once and for all, is that current lawful uses undertaken by lakefront property owners, will go forward without interference as a result of any legislation that we enact. The idea would be to create a regulatory scheme that would govern future uses that are not currently in place. The way that the current proposed legislation reads, is that some uses are permitted in the Waterfront Setback, one of those would be installation of landscaping, or installation of a new lawn.

The thought from some of the people, that we've received comments from, is that should not be a permitted use but a conditional use. The idea would be that the Village would have inputs both from a preservation stand point with respect to its interest in storm water management and pollution from surface runoff as to justify oversight from the conditional use standards that are in the Zoning Ordinance. The upshot of that being that it has to come to planning commission and it is reviewed and is permitted based on conditions that the planning commission can attach. That makes sense based on a site-by-site-by-site analysis. Same thing with the removal of trees. The idea of a conditional use appeals to me because it allows people to come in and give notice of what they intend to do. It allows their neighbors to get notice of those proposed improvements and it allows some oversight by the Planning Commission as to how to evaluate a proposed use. Certainly not with the idea of interfering with what anybody wants to do but to make sure that their uses don't encroach on their next door neighbor or the guy across the street. I think that's also a solution that is pretty easily incorporated into what we have.

Discussion regarding how to handle trees in the setback.

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Mr. Heintz said the Village has the ability to enact regulations that have to be reasonably related to legitimate public interests but a property owner has the right to forbid somebody coming on to his or her property and undertaking activities that the owner doesn't want.

Unknown speaker asked if someone wanted to remove trees, they would have to come and address either the village or another entity to be able to do that, even though it's on their property? The reason I bring it up is because Mr. Stoiber had indicated that trees suck up thousands of gallons of water each year that helped from causing erosion. When I see a number of trees go down, you'll lose that volume of water that's taken up.

Mr. Heintz said if we do what they're talking about doing, yes.

Mr. Al Lloyd - The original thought and fear of people was centered on the fact that, if the Riparian Setback was there, you could come in and force us to plant plants and things like that. I've heard you say and Solicitor Heydorn say that that would be unconstitutional.

Mrs. Polly Bloom said as a community, we need to establish what are our priorities and what are our goals regarding this. This way the community members can understand why we put these ordinances in effect.

Mr. Jack Morrison - I had suggested on a prior occasion that the lakes be removed from that ordinance, my opinion has not changed. Now you're proposing a lake or waterfront setback ordinance and I think that would be a mistake. The Riparian Ordinance that we currently have is a very carefully crafted document that came out of Summit County. The request by Summit County is that communities that adopt it so that the County would have a unified Riparian Ordinance. My suggestion is that we remove the lakes from the Riparian Ordinance and allow the Riparian Ordinance that you have to remain in place. What I think would be a better idea, is a public and private partnership, a coagulation between the trustees and the Village in a memorandum of understanding that allows the Village to share with the trustees certain best practices that the Village may be aware of. That would be much less intrusive than the government attempting to exercise authority over private property. All of the issues that I have heard addressed, are already being addressed by the trustees. The trustees are opposed to legislation because it is not needed.

Mrs. Mary Wright - We had a meeting and we all feel very strong about the same thing. We feel that you've done a good job and you've been through a lot in the last thirty, forty years. You've done a great job of bringing the lake to a healthy position, and spent a lot of money and time, all of us. I would love to work with the Village Council to put together a package that would protect all of the land and the residents of the lake. To suddenly take it away after a trust has been established doesn't make sense to me.

Mayor Hovey - I would first like to start reiterating that no one is taking anything away. We all have private homes, we all own private property, we are all subject to government regulations. The fact that it's private does not necessarily mean that the government does not have a right to impose legislation or regulations that are better for the community. There has been lots of discussion regarding the trees. I think I've mentioned before, several years ago, Village Council did try to get

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some kind of legislation regulating removal of trees on a private property and it just went nowhere. Same thing when Council tried to pass legislation regulating or eliminating fertilizers. That didn't go anywhere either.

Mr. Johnson I've been on record from virtually day one, relative to the trust that I represent in opposition to the inclusion of lakes to the Riparian legislation. My position remains set as no. So many cities and villages have adopted this with our revisions to it, they have those as part of it as well. I would encourage you to take a look at that. I'll have hard copies to distribute to people. I've yet to run across other counties where lakes are included. I'm sure there are other communities that have done it, but as was the case with Summit County, it was a streams and rivers intention and that's the way it was enacted. The trustees are focused on the quality of the water. I want to be very, very clear we have been and we are opposed to the inclusion of lakes in Riparian Ordinance.

Mr. Heintz -I want to try to summarize where we are. I think it might be fair to say that everybody seems to want the same thing but there seems to be an issue as to how we get there. Remember that we're not enacting anything because Village Council makes the laws around here. I couldn't agree with the Mayor more in his characterization that, just because you have private property doesn't mean you're not subject to reasonable governmental regulations. I believe that it would be unwise to simply exclude a significant chunk of the village from any zoning oversight.

Mr. Heintz said I would propose that I would take another stab at this and try to incorporate the comments that we've heard this morning and otherwise, and then circulate that and see what we have.

Mr. Heintz said I would like to have it to Council by the middle of September. He said anybody who wants to submit anything is welcome to do so.

There being no further business to come before the Planning Commission, Mr. Heintz thanked those in attendance for coming and adjourned the meeting at 8:35 a.m.



for Jeff Heintz, Chairman