



CITY OF OLMSTED FALLS
PLANNING AND ZONING COMMISSION
MINUTES
JANUARY 16, 2019
7:30 PM
COUNCIL CHAMBERS

Commission Members Present : Brett lafigliola, Garry Thompson, Gary Pehanic, Peter Carpenter, and Dave Fenderbosch. Michelle Hawkins and Jim Haviland were excused.
Audience: 24

Chairman Brett lafigliola called the meeting to order at 7:32 p.m.

ELECTION OF CHAIRMAN

Mr. Pehanic moved to **elect** Brett lafigliola as Chairman of the Planning and Zoning Commission for 2019; Mr. Thompson **seconded**. Poll: 5 ayes; 0 nays. **Motion carried**.

ELECTION OF VICE-CHAIRMAN

Mr. Pehanic moved to **elect** Garry Thompson, who has had multiple years of experience in the City of Olmsted Falls as the Vice-Chairman of the Planning and Zoning commission for 2019; Mr. Fenderbosch **seconded**. Poll: 5 ayes; 0 nays. **Motion carried**.

1. Planning & Zoning Case #18-2018 - A request made by Mark Kopcienski, representing WXZ Residential Group/Falls Pointe, LLC for approval of the final PRD Development Plan pursuant to Section 1232.06(k)(B)(7); approval of the final subdivision plat pursuant to Section 1224.07; and approval of a riparian setback variance of fifty (50) feet to permit a water quality basin to extend to within 25 feet of the watercourse in lieu of the required 75 feet.

Mr. Kopcienski stated that he is the senior development manager at WXZ Development, 22720 Fairview Drive, Fairview Park, Ohio. Bob Yagersz stated he is with Polaris Engineering & Surveying at 34600 Chardon Road, Suite D, Willoughby Hills, Ohio. Mr. lafigliola administered the oath to both gentlemen.

Mr. Kopcienski stated that this is a part of the Falls Pointe subdivision which currently consists of approximately 435 homes including clusters and this is the last to be developed piece of property and was approved under the original PRD in 1996. We are present to get approval of this final phase of 37 lots. There are 37 fee simple lots on the plan which was presented, approximately 9.3 acres of private streets, Olmsted Falls sanitary and Cleveland water. The lots and homes will be subject to the rules and regulations of the Master Falls Pointe Association and will be members thereof, pay dues and we will then create or own sub-association for these 37 lots as is typical within Falls Pointe. The preliminary plan for this project was approved at the September 5th Planning and Zoning meeting. We subsequently went to the Shade Tree Commission on September 11th and our tree mitigation plan, according to the Shade Tree regulations was approved at the September 11th. We then attend the Architectural Board of Review meeting on September 13th where we received approval for the proposed homes for this

subdivision as well as approval for signage. The plan submitted has not changed substantially but some minor adjustments were made as a result of the technical issues surrounding putting the streets together as well as the pipes under the road. This has moved some of the easements. In addition to that the comment letter received in December from the City Engineer noted that there is a new code regarding riparian setbacks and in this case from Plum Creek which is adjacent to back property and part of our plan encroaches into the 75-foot setback. He would like to note that the existing detention basin on Ravinia is located in the setback and was installed prior to the code changes. He is requesting the variance to install a water quality basin no buildings. The recommendation by the city engineer was contingent upon some of these approvals and then he will have to go through approvals from Cleveland Water and Ohio EPA.

Mr. Iafigliola read a memo from Don Sheehy, the city engineer dated 12/14/2018 (see attached). He asked Mr. Kopcienski if he had any objections to Mr. Sheehy's items. Mr. Kopcienski indicated that he does not and is working to address all those items at this time. Mr. Iafigliola read an email from Don Sheehy dated 01/04/2019.

Bill Thompson, 9202 Lakeview Drive, Mr. Iafigliola administered the oath. Mr. Thompson stated that he is president of the single-family homeowner's association within Falls Pointe. He asked if there was any idea for the timing of breaking ground and completion of the project. Mr. Kopcienski indicated that he hopes to break ground this Spring. Mr. Thompson asked if this would be a one-year project or two-year project. Mr. Kopcienski replied one year. Mr. Thompson asked if there were any thoughts about accommodating existing residents to the construction traffic. Mr. Kopcienski indicated that he always takes that into consideration and will have a signal entrance on Lakeview and we would only use that entrance for construction traffic entering and exiting. Mr. Thompson asked if a study has been completed to determine the environmental impact to the existing infrastructure. He has spoken to Mr. Iafigliola in the past and he is not an engineer but does want to make sure that there was consideration if there is going to be additional streets brought in with sewage, water runoff, what is the potential impact to existing houses and infrastructure. Mr. Kopcienski replied to be clear as far as water is concerned this area is serviced by Cleveland Water and they will review the plans as well as the EPA before a permit is issued. Same thing with sanitary sewer which is operated and serviced by Northeast Ohio Regional Sewer and will review the plans. The sewer was brought out for this project and all of this area was included in the original plan. As far as stormwater is concerned all three areas which is Devonshire, this parcel and Ravinia Drive, as well as some of Willowbrook were all originally designed to go into the existing stormwater basin. That basin is part of the master association and we have reviewed the calculations and submitted to the city engineer. There will be two small treatment basins on this site. Mr. Iafigliola asked if the rain water that flows into the new catch basins will flow into the big lake or the lake

behind Ravinia. Mr. Kopcienski replied that it will flow into the retention pond behind Ravinia and then out to Plum Creek. As a note, the water from the big lake flows in a 60-inch pipe and flows through that basin and into Plum Creek. Mr. Thompson stated that upon approval of this project will there be any assets or liabilities that the master association is going to have to assume. Mr. Kopcienski replied nothing on the 9.6 acres. Obviously, the sanitary will flow through the existing system.

Mr. Thompson asked if there has been any process put into place around the transfer of ownership rights from Flair Group to WXZ and how that impacts the declarations covenants and bylaws of the association. Mr. Kopcienski indicated that he has no interest in taking responsibility as declarant for the master association, whatever Flair does is what they do as part of their development. Mr. Thompson replied he will follow up with them.

Betsy Buxton, 9455 Ravinia Drive. Mr. Iafigliola administered the oath. Ms. Buxton stated that Mr. Iafigliola at the September 5th meeting had specifically asked the board Falls Pointe Cluster Housing Association III, which she is the secretary too, what the board's decision was regarding the future of Pepper Tree Lane. The Board wrote the attached memo. She has also provided a copy of this memo to WXZ Development.

Ms. Buxton read the attached statement regarding the storm basin maintenance. Mr. Kopcienski indicated that he has no objection that has been taken by Ms. Buxton or many of the other residents in Falls Pointe as it is the responsibility of all residents in Falls Pointe to take care of the storm water facilities, which means the master association should be doing that, and we are fully in support of that. It is the responsibility of the city to make sure that those private residents are taking care of their private storm systems. So, we encourage the city to make sure that the subdivisions are doing that.

Mr. Smerigan stated that the basin belongs to and is the responsibility of the master association, they own it and have the responsibility to maintain it. The design of the basin and flows were all reviewed and approved by the City under subdivision regulations. This basin and the flows are required to meet certain standards, we are also under Ohio EPA regulations to make sure that storm water is handled in a certain way. The City's obligation is to make sure the basin functions as designed and meets our normal storm water drainage standards and therefore the city oversees the residents and makes sure that they maintain the basin.

Renee Vlasuk, 9425 Ravinia Drive. Mr. Iafigliola administered the oath. Ms. Vlasuk indicated that she is her homeowner's association representative to the master association. She stated that the master association is where things falls apart, currently we have a declarant who is part of Flair. We as a master association do not have any

power as long as the declarant is there. She brings up the ponds at least four times a year as they do need to be maintained but she cannot get them to take responsibility for them. Her and her husband met with Jared Bartley who is part of the Rocky River Watershed Conservation and walked all of the ponds and informed us as to what needed to be done and how they should be cut. She cannot get the master association to do anything suggested. She asked if there was a schedule to inspect the ponds and inform the association that they are not doing maintenance. Mr. Smerigan stated that he is not aware of any schedule. He has discussed this basin with the city engineer and service director and subsequent to that discussion it was looked at. The problem that the master association has is Flair who was the original declarant still has control and authority until he sells this last piece of property and once, he has left it will allow the association to operate as it should. Ms. Vlasuk stated that the pond on Usher and Schady is in the worst shape not the one on Ravinia. Mr. Smerigan stated that he is willing to discuss the issue with the Mayor and City Engineer again to discuss do whatever is necessary to encourage any required maintenance. Unfortunately, what is in front of the Commission is this last phase and WXZ does not have any control or authority over this basin, so this issue is not going to be resolved based on their application. Mr. Iafigliola agrees.

Stephanie Klokoc, 9163 Devonshire. Mr. Iafigliola administered the oath. Ms. Klokoc stated that she is the president of the Villas of Falls Pointe II. She stated that Mr. Kopcienski has been wonderful and met with her board and explained a lot of what he was going to do. She would like to know when the homes are built on the Devonshire side will the lots be higher so that water flows towards her property or flat. Mr. Kopcienski replied that they will be slightly higher however, as part of the plans submitted, we are dealing with the drainage coming off the back of the homes with yard drains. Ms. Klokoc stated that she wanted to make sure that the six homes basements do not flood as they do not flood now. Mr. Iafigliola replied that to say that a home doesn't flood now and does flood after additional homes are built does not mean that is the cause of the flooding, as that could be caused by various reasons. Ms. Klokoc indicated that she understands she would like to make sure that the right drainage is put in behind the homes and the water flows away from her development. Mr. Iafigliola indicated that the applicant has included yard drains to help catch some of the water that may pond in the new resident's yard.

Ms. Klokoc stated that once all of the trees are removed will that destroy any of the surrounding trees. Mr. Kopcienski replied no. Mr. Smerigan stated that it may impact the trees on Mr. Kopcienski's property but not on her property. Ms. Klokoc stated that the city has a responsibility to the storm basins and this issue was discussed previously with Mr. Smerigan and asked if the city could cite Flair for not maintaining the basins. Mr. Smerigan replied if the city engineer were to inspect the basin and find that it is not up to the standard it needs to be then he can send a notice to Flair to make that

happen. Since Flair is in control of the association and failed to comply, they would be liable at that point. Ms. Klokoc asked if that would be in terms of fines. Mr. Smerigan replied that technically it is the association and the association would be fined. Ms. Klokoc indicated that you could add Villas of Falls Pointe II onto the list that would go to the Mayor and let him know that his community, that he lives in, is well aware. Mr. lafigliola also urged Ms. Klokoc to contact City Council.

Scott Solarz, 9585 Ravinia Drive. Mr. lafigliola administered the oath. Mr. Solarz asked if this is not granted what would happen? Mr. lafigliola stated that the short answer is and maybe he should reiterate, the development of this particular parcel has already been approved this may not be what the applicant desires to do but remind me how many units are in this set up. Mr. Kopcienski replied 37. Mr. lafigliola indicated that this is two less than was approved. Mr. Kopcienski replied yes. Mr. lafigliola stated that this plot of land was approved to be developed along with the rest of the Falls Pointe approval back many years ago, so if this was denied the applicant could revert back to that old plan and not have to really seek planning commission approval more or less and then it would also include the connection to Pepper Tree Lane of what the original plan included so that is one option that the developer has the other is he could basically appeal he can take legal action there are lots of choices that the applicant has if it does not go through.

Mr. Solarz indicated that he has talked to a lot of people, like Ms. Buxton, about the basin. The basin is behind his home and he sees it every day, not like some engineer that's never looked at it and shows up and says, yea no problem it will handle all the new runoff. He has pictures on his phone and would be more than happy to send to anybody. Right now the basin crests up to the very top level and a little bit farther up its going right into his yard and it's going to go onto his foundation to drain out. So, when all that land's taken away that absorbs that water and 37 units go in there and that basin is relied on to handle that, it's not going to handle it, and if somebody in the city or the builder is willing to put their name on a piece of paper saying it will so if it doesn't handle it then his has some kind of recourse so at least he is covering himself. This is his opinion and he has pictures on his phone that he will be more than happy to present to anybody. Not to mention, the whole lot of land, what he wants to develop, is different from the original plans, the whole layout of how the houses are going to go, the streets, and the basin was different back then the basin is not the same as it is today. When they redid the basin it was made into a detention and retention so they changed the whole layout of the basin and that's his concern. The only reason he is here is because he learned through having his house built by K. Hovanian that they pretty much did what they wanted on that street, ordinances, codes, variances, somehow some of them kind of slipped by somehow with no body saying anything from the city. His foundation somehow was approved by the City of Olmsted falls and he is convinced it was approved by a guy sitting in his vehicle because it was a cold day and he didn't want to

actually get out of his car and walked around his foundation to look at how horribly of a job that K. Hovanian builders did and said "aw it looks fine from here." When he moved into his house he sees how crappy of a job it is and has to spend \$8,000 of his own money to make it look nice. When he asked the building department about it the few times he has been up there, you hear tumbleweed and crickets, nobody knows how it got approved and that's what worries me about a builder coming in just changing things as they go and the city letting them to do it because it all comes down to money right they make money, tax dollar money, that's his concern. So, first of all is somebody in the city or the builder willing to put their name on a piece of paper saying that that basin will handle the new runoff and basically that's his big concern.

Mr. Iafigliola asked Mr. Kopcienski if he wishes to respond, he believes this gentleman is asking about the calculations for the storm water basin which he thinks Mr. Kopcienski would have a response.

Mr. Kopcienski stated that as previously mentioned by Mr. Smerigan this basin was designed to take all the areas, Clusters two, this property, and Ravinia. Those calculations were reviewed and re-reviewed by the city and now they are being reviewed again by the current city engineer as we move forward as they will be by Ohio EPA. So, we have a professional engineer reviewing them and were told by the city engineer that we need to make sure that we are not exceeding what was planned into the basin as far as flows when we develop ours.

Mr. Iafigliola indicated that he understands what Mr. Kopcienski is stated and what Mr. Solarz is stating and believes that what that Mr. Solarz basically saying is who will tell me that these calculations are good, paraphrasing. The applicant is stating that he has an engineer who will tell him that those calculations are good. He tends to believe Mr. Solarz antidotal observation as he sees it every time whereas the rest of us do not. If he would like to see a copy of the calculations, he is sure the applicant would be happy to provide them and if there is further information, he would like to see he would need to contact the city engineer. He senses that Mr. Solarz is frustrated but has to realize whom he is speaking to at the moment.

Mr. Solarz indicated that he is not frustrated but, in a year, or two years from now he does not want to come in and say "I told you so." If he has to do that then who is going to take responsibility. If he has three feet of water rubbing on the corner of his house to drain into Plum Creek washing away his stone veneer that he just put on because his foundation was so poorly done by K. Hovanian that somehow the city overlooked what's going to happen if that happens; is he going to have to get a bunch of lawyers and fight everybody because usually that's how it works out, no one takes responsibility when that stuff happens. As he tells Ms. Buxton he is the new guy on the street and who cares about the little guy and the new guy on the block so that's his concern.

Mr. Smerigan indicated that he cannot speak to what happened with building inspections or whether something was missed or not or not picked up by the building department. What Mr. Solarz has to understand is that when the storm drainage plans are designed and approved, the design is based on a certain standard, it's a certain amount of runoff, there is no guarantee that nothing will ever flood that's not going to happen. There is no system that can be built to handle every storm that could ever possibly happen so that's not the design standard. The design standard is to handle a storm of a certain intensity and the city engineer's responsibility is to make sure that these designs will handle a storm of that intensity. If we get a storm that is five times that intensity then the basin might overflow, but the design is only up to a certain point, otherwise there is no way you could build it big enough.

Ms. Buxton stated that she has not been down to the basin when we have had a heavy rain for quite some time, she is not the city engineer but she thinks one of the problems that Mr. Solarz is observing is as a result of the current status of the Ravinia basin. She does not believe it is up to code, she thinks it is not functioning at its peak, it's been since 2014 since it's been maintained properly and it is in need of some serious adjustments. She thinks if that was done then Mr. Solarz would not see the cresting that he sees. She asked does it would take to get it done and if the city has an accountability.

Mr. Smerigan stated that he does not disagree with anything that Ms. Buxton is stating but is saying that you need to understand that it may be that the basin is not functioning up to the required design in which case it needs to get fixed. But, to expect that in any storm of any magnitude that that basin is always going to work is a fallacy and he does not want anyone to walk out of here with a misunderstanding because that won't be true its only designed for a storm of a certain intensity. But it should handle that storm properly and if it's not then we need to get that addressed. Ms. Buxton replied that she believes that is where we are right now, it needs to be addressed, so who, what, where, when, why, and how to get that done.

Mr. Iafigliola stated that he needs to remind everyone that tonight's commission is the planning and zoning commission we are not the enforcement and punishment commission. Ms. Buxton stated that we are taking advantage of tonight because we may never get the opportunity again. So, if there is another step and another place that we should be at, City Council was mentioned she would be happy to do that.

Jim Nadhasky, 9500 Ravinia Drive. Mr. Iafigliola administered the oath. Mr. Nadhasky stated that its probably too late now because the Hovanian homes have already been built. He was the last house built by Flair and has the Hovanian homes next to him and more homes will make the water issue worse. His home is surrounded by water constantly except when it is 90 degrees and the middle of summer because

every tree was removed down the street to put in more homes. So, when they took all the trees out and built the homes on swamp land that sucked all the water up and now the water sits on three sides of the house and there is no where for it to go. The area under the high-tension lines floods but that is Olmsted Township, but all the water drains off and ends up in his back and side yard. The house next to him slopes down and all that water runs into his yard and now all three sides of his home are full of water. If its not the middle of summer he can hardly walk in his yard its like walking in a swamp. If 37 more homes are added on the other side the water is never going to leave the area. Mr. lafigliola stated that there are some engineering controls in place with this applicant which sound like were not in place with his development. Just because there is more development on this property does not mean they are no installing yard basins to catch back yard water and he would venture to guess he does not have.

Mr. Smerigan would like to reiterate that what the Commission has before them are requests for three approvals, the final subdivision plat, which has been reviewed by him and the city engineer, and in our professional opinions the plat is in approvable form, final development plan approval for this phase of the project for 37 units as laid out, and again he has reviewed it for compliance with the zoning code and the city engineer has reviewed for compliance with our development regulations. We are both of the opinion that the final development plan, as presented to the commission, is in approvable form and meets our requirements. The final request is a variance to the riparian setback for the water quality basin. As you have heard under the new regulations, we now have to treat storm water and these water quality basins are needed. There are two within this development and are near the existing basin. The existing basin is inside the riparian setback currently because it was built before there was a riparian setback within the city. He would note that the basis for the setback is to protect the water quality in the stream which is the very intent of the basin. He and the city engineer are recommending approval for the variance as well.

Mr. lafigliola stated that there is a relatively large storm sewer that bisects more or less this parcel as part of the original development that is functioning and that takes the water from the "big pond" over to the Ravinia basin. Mr. Kopcienski replied yes. Mr. lafigliola asked if it was fair to say that large portions of this pipe would be removed and rerouted. Mr. Kopcienski replied yes.

Mr. lafigliola stated that some of the units are referred to garden style and asked what that type of unit was. Mr. Kopcienski indicated that a garden style basement would allow the back of the house to be raised up enough for windows but not a walk out basement.

Mr. lafigliola asked if the applicant would be adding any sort of berm to the riparian area. Mr. Smerigan indicated that no dirt will be placed in the riparian area. Mr.

Kopcienski stated that he is not building berms to create the basin, we are digging down into the existing ground to create the basin.

Mr. lafigliola stated that he previously asked the following considerations: (1) crosswalk; (2) landscaping along Devonshire; (3) disposition of Pepper Tree Lane; and (4) entrance sign details. Mr. lafigliola asked if the applicant had any objection to the crosswalk being placed on Lakeview Drive. Mr. Kopcienski indicated that it is his opinion that the safest place to cross the street is at an intersection and there are two intersections that are accessible to cross. If the city would like him to put in a "T" intersection and handicap ramp down Lakeview and cross in the city right-of-way and connect the existing sidewalk then he will do that. He indicated that he would ask that the city take responsibility for the safety of those people by telling us to do that. Mr. lafigliola indicated that he would like to move forward with this suggestion. Mr. lafigliola asked what would happen with regard to the landscaping along Devonshire. Mr. Kopcienski indicated that the lots stop approximately 15 feet from the property line on the Villa's II side and there is an area designated as a preservation area where there will be no disturbance of trees. As far as the back of the lots, there will be disturbance to the property line for clearing and grading and then in addition to that we are planning on rear water storm basins to address the concerns raised earlier. As in any situation we are responsible to take care of the water that runs off our roads, roofs, or lots and we will do that but we are not in a position to take care of water that may be running onto someone else's property or sitting on a common property especially in a phase where we will not be making any disturbances. Mr. Smerigan stated to be clear, since the residents raised the storm drain question, the residents in the Villas, there is a yard drain behind each of those houses that backs up to the common property line which should collect all of the storm water so it does not travel to the north onto the adjacent development.

Mr. lafigliola stated that, in his opinion, Mr. Kopcienski is within his rights to not provide any additional landscaping but believes the Commission is within its right to require additional landscaping, but he has no objection to what is being proposed. The end of the property line for subplot 1 relative to the overall property line is about 15 feet and asked if there was anyway the clearing from the property line could be more than zero or five feet. He stated that he is not interested in restricting the grading capability but as this Commission has heard on many occasions clearing up to the property line usually has an adverse effect and what he does not want are residents indicating that the trees were cleared and that killed a tree. Mr. Kopcienski replied that in his experience in both building and developing for 25 years, not clearing to the property line and grading to the property line is not a proper function to deal with the storm water that comes off the backs of the homes. It would not be a good idea to leave trees on the back of the lots because those trees would be unlikely to live. Mr. lafigliola replied that what the applicant is stating is that he is more interested in the storm water protection rather than

tree protection. Mr. Kopcienski replied to be clear, we will clear to the back of the lot line which is still 15 feet from the common property line between the Villas II parcels.

Mr. Iafigliola stated that the entrance sign detail was indicated in the plans that there will be a sign on Lakeview indicating sale information. He challenged Mr. Kopcienski to develop a better entry design. Mr. Kopcienski stated that the entrance sign, landscaping and signage are reviewed and approved by Shade Tree and ABR, there was a lengthy discussion at the ABR meeting regarding the sign and fence both were approved subject to the vinyl fence finish being matte rather than shiny.

Mr. Iafigliola asked if the copy of the declarations of covenants, conditions and restrictions imposed upon the lands within Falls Pointe Olmsted Falls, Ohio Phase C5. was a standard document and in his opinion could they be changed or do they have to match the master association. The reason he is asking is that there are certain things within Planning Commission's jurisdiction that we can comment on and somethings that are not within our rights to comment, whether we agree or not. He asked if Mr. Kopcienski could briefly explain the thought when these were set up. Mr. Kopcienski stated that the State of Ohio regulates homeowner's association so there are things within the document that must comply with the regulations of the State of Ohio. In addition to that, any association will do two things, provide maintenance for the common areas and provide for some rules and regulations regarding how the individual properties can be designed and used. In this particular case we modeled the document after the existing sub association documents, which is Ravinia. We are not in control of the master association as the master association and the declarant are the ones that write and put in new lots for the Falls Pointe PUD. We will write the sub association but Falls Pointe Limited signs them and puts them into place. Once they are put in place and recorded, we then become the declarant. So, these are modeled by an attorney he has used for 20 years to reflect what is going on in the neighboring sub associations. Obviously, all of this is subject to the master association. Mr. Iafigliola stated that there are some people who sit on the sub association boards and from his experience living in Falls Pointe there are some items that quite frankly do not make sense to him but might make sense to the declarant or the developer particularly at the beginning of the project. As you have heard from the residents sometimes these things do not work out like they are supposed to. It was previously indicated that the size of the homes will look similar to the houses on Ravinia and maybe on Willowbrook. Mr. Kopcienski replied that at this point in time they are all planned to be two story but there is no restriction within the document to only two-story homes. Mr. Iafigliola stated there is a two car minimum and three car maximum, but, for the style of home being proposed a three car sounds big based on what he sees in the neighborhood. He is also concerned regarding the fact that nothing can happen, outside of the construction of the house, without explicit written approval of the declarant or the design review committee. So, it really comes down to a single person having control and the person who has control essentially is

acting as the boss of the entire neighborhood and there is no recourse. There are restrictions regarding storage buildings, sheds, structures, fences, but the one that really concerns him is “no sign or advertising device, including without limitations for sale signs”. So, if he wanted to sell his house, he would need to get explicit written approval from the declarant or the design review committee to put up a for sale sign in front of his house. Mr. Kopcienski replied that for sale signs would be exempted from that limitation. Mr. Iafigliola asked if he was reading the document wrong, the declarant and the design review committee do not have explicit control until such time as the declarant turns the property over, he has concerns with that. Mr. Kopcienski stated that was correct. This in fact is very common, every community he has been involved with over 25 years has the declarant in control until the last home is built. We will provide design guidelines, in concert with our builder, so for instance you can use these three types of fences but you cannot use chain link or green vinyl. If you were to turn over control when there’s 50% and you want to change things then there are 23 people who built expecting a certain standard of house, fences, allowed decks, allowed swimming pools and anything else so, you would break confidence with them as they are expecting everyone to comply with the restrictions. Mr. Iafigliola stated that he does not disagree, as you are buying into the development, whether you know it or not, and he would be willing to bet that some people do not understand. If no one questions it, it keeps proceeding until a single declarant who has essentially absolute control over everything but the mortgage payments.

Mr. Smerigan stated he understands the concerns. This comes up all the time in these documents, every development has specific standards in there these are not different than other sections of this project. The issue that you raise about when the control flips; if this were the original project with all the phases and several hundred units the point would be more appropriately taken because then you would be dealing with a project that will be constructed over many many years. This one has been going on for 23. He runs into the issue in many communities where over time, when we have a slow down you get a situation where the resident living in the development would like to control their own environment and neighborhood, which he does agree with. He does not feel it is as critical when you have a small project which will be accomplished in relatively short period of time. The issue in this development is not with any of the sub associations, those are operating well, it is the master association. He stated that the sooner this project is finished the sooner the residents will be in control over their neighborhood.

Mr. Solarz stated that he is not trying to be disrespectful to anyone but the basin is located in his backyard and his concern is the normal weather rain, one or two days, not a monsoon, a monsoon or hurricane would flood, that is his concern about the basin. It will not handle these new lots in his opinion. The second thing he respectfully requests that the commission deny the variance because what will happen when they start building is that they are going to run into problems like all builders do and then they are

going to run into other codes and variances and as they go, they will be changed and adjusted to fit their needs like K. Hovanian did on his street. Like squeezing a house onto a small lot, making the house smaller or changing the setback where the house should be on the street, this will happen. They are going to run into problems like all builders do and things are going to be changed as they go and that is why he is requesting that the commission deny this. He also requests that the commission try and get some Better Business Bureau credentials from them and maybe, not saying that they are a bad builder, not to be disrespectful, but the commission should look into the history of what the builder has built and speak with individuals who have purchased homes on their lots. He did not look at K. Hovanian's record too well and they have a lot of lawsuits, arbitration suits, Shady Elm in Olmsted Township the people there are going through a lot with K. Hovanian. He requests that the commission do their homework and get as much information about the builder as they can. Mr. Iafigliola stated that Mr. Kopcienski represents the developer not necessarily the builder. He stated that Mr. Solarz's comments are well received but not directed at this particular gentleman although it does not make them any less valid.

Mr. Iafigliola stated that the plan submitted is what the builder and developer is obligated to do and if there is a change that needs to be made then they will need to go through the proper channels. If for some reason a change is made, if anything, that is the easiest to document. He understands and respects the resident's comments.

Mr. Iafigliola moved to **approve the variance** of the riparian setback pursuant to docket #18-2018 of 50 feet to permit a water quality basin only to extend within 25 feet of the water course in lieu of the required 75 feet, noting that this basin is considered an excavation rather than an embankment into the riparian setback; Mr. Carpenter **seconded**.

Mr. Iafigliola stated that he does not take this variance lightly, riparian setbacks are important for a lot of reasons that do not necessarily only apply to water quality basins. He would like the record to indicate that in this variance the applicant has indicated in his required findings for variances that he has answered them reasonably. This is not a variance that is granted lightly mainly because of the riparian setback and what it really stands for and what it is trying to do. He also understands what the applicant is trying to do and believes that he is making a reasonable and fair attempt to accommodate what the basin is attempting to do. Poll: 5 ayes; 0 nays. **Motion carried**.

Mr. Iafigliola moved to **approve the final subdivision plat** pursuant to docket #18-2018 a request by the WXZ Residential Group for approval of the final PRD development plan pursuant to section 1232.06(K)(b)(7); contingent upon the following: (1) inclusion and satisfaction of the city engineer per his memo dated 12/14/2018 of which there are 20

items that the applicant has indicated he will address; (2) citing the testimony of Mr. Smerigan and (3) the disposition of Pepper Tree Lane staying in its current condition as agreed to by the applicant and as indicated by the sub association; (4) curb ramp and ADA appropriate crosswalk across Lakeview at the “T” intersection as previously discussed; Mr. Thompson **seconded**. Poll: 5 ayes; 0 nays. **Motion carried**.

Mr. lafigliola moved to approve the final subdivision plat pursuant to section 1224.07 relative to docket #18-2018 contingent upon the following: (1) inclusion and satisfaction of the city engineer per his memo dated 12/14/2018 of which there are 20 items that the applicant has indicated he will address; (2) citing the testimony of Mr. Smerigan and (3) the disposition of Pepper Tree Lane staying in its current condition as agreed to by the applicant and as indicated by the sub association; (4) curb ramp and ADA appropriate crosswalk across Lakeview at the “T” intersection as previously discussed; Mr. Thompson **seconded**. Poll: 5 ayes; 0 nays. **Motion carried**

Mr. lafigliola stated that for those who may or may not leave this meeting satisfied that anything was realistically accomplished to your benefit, again, the Planning Commission is telling the developer this is what he will do and any variability from that will require a whole new round of reviews and changes.

2. Planning & Zoning Case #01-2019 – A request made by North Coast Design Build, representing Village of the Falls Rental Properties, for final site plan approval for a proposed skilled care nursing home expansion located at 25920 Elm Street, pursuant to Section 1232.06(k)(B)(7) and lot consolidation.

Mike Cloud, 4205 Eastlake Road, Sheffield Lake, Ohio 44054. Mr. Cloud stated that he was before the Commission in 2017 to rezone a small parcel contemplating this expansion. The rezoning was granted. His client proceeded to make Certificate of Need application with the State of Ohio, which was granted in late 2018, and hope to break ground in the Spring. The project is a single story 36 bed addition for physical therapy for skilled care beds and will be attached to the existing living facility. The total expansion will be 18,300 square feet. We have attempted to mirror the existing facility in every way possible in terms of aesthetics using the same types of materials, etc. We have analyzed parking and this cite is long on parking at the moment and added more for convenience. For the department of health and fire department there is an emergency access only in the event of a fire or evacuation. The standard for evacuation of a skilled care facility is not to evacuate to the outside but rather a different compartment. There is a two-hour fire wall in the event of an emergency we will evacuate individuals into another portion unless both portions are on fire, which is highly unlikely. We have created an egress walk that meets ADA requirements all the way around the building. He stated that the storm water basin will be in the front lawn and will be lined with river rock and decorative landscaping and trees. He stated that the

lighting desire is to light just enough for safety and the walkway. We are showing a tenth of a foot candle at the property line. He stated that during the last meeting a neighboring property owner indicated that this area held water so they have added yard drains in three extra spots, which were not needed for our draining, but were added to make sure there is positive drainage and to be a good neighbor.

Mr. Cloud stated that this project will add approximately 50 full time equivalent paid positions but the maximum staff on shift is 10, so the maximum parking is a minor additional load. The campus, when originally built, was designed for an addition in this location.

Mr. Smerigan stated that the commission will need to approve a lot consolidation which eliminates all the setback issues and is a requirement to build. The photometrics are acceptable and they have done a nice job on the landscaping for the neighbors. Yard drains were added which he believes will help the neighbor's in terms of the storm drainage issues that were raised.

Mr. Smerigan indicated that the Section should be 1232.06(k) that is the section regarding submission of final development plans.

Mr. Iafigliola moved to **approve** the lot consolidation pursuant to Planning and Zoning case #01-2019 a request made by Northcoast Design Build representing Village of the Falls located at 25920 Elm Street, with the following conditions: (1) final approval of the city engineer's additional comments; Mr. Thompson **seconded**. Poll: 5 ayes; 0 nays. **Motion carried.**

Mr. Iafigliola moved to **approve** the development plan for Planning and Zoning Case #01-2019 a request made by Northcoast Design Build representing Village of the Falls rental properties located at 25920 Elm Street pursuant to Section 1232.06(k) subject to the city engineer's final comments; Mr. Pehanic **seconded**. Poll: 5 ayes; 0 nays. **Motion carried.**

COUNCIL LIAISON REPORT: None

OTHER BUSINESS: None

APPROVAL OF MINUTES: Mr. Thompson moved to **approve** the Planning & Zoning Commission minutes of December 19, 2018 as presented; Mr. Pehanic **seconded**. Poll: 5 ayes; 0 nays. **Motion carried.**

ADJOURNMENT:

Mr. Iafigliola moved to **adjourn**; Mr. Thompson **seconded**. Poll: 7 ayes; 0 nays.
Motion carried.

Meeting adjourned at 9:58 p.m.

Planning & Zoning Commission Clerk

Date

Planning & Zoning Chairman

Date