



CITY OF OLMSTED FALLS
PLANNING AND ZONING COMMISSION
MINUTES
April 17, 2019
7:30 PM
COUNCIL CHAMBERS

Commission Members Present: Brett lafigliola, Jim Haviland, Gary Pehanic, Garry Thompson, and Peter Carpenter. Michelle Hawkins and Dave Fenderbosch were excused. Audience: 4

Chairman Brett lafigliola opened the public hearing at 7:30 p.m. and stated that the purpose of the public hearing is a request made by John Jacobs, owner of 7932 Main Street, (Olde Wine Cellar) PP# 291-19-004 for a conditional use permit for outdoor seating areas to be located in the front and back of the Olde Wine Cellar pursuant to Section 1252.03(5)(b); a variance of 1 feet to Section 1274.03(a)(1)(A) to permit a fence to be 4 feet in height in lieu of the maximum 3 feet.

Mr. lafigliola administered the oath. Mr. Jacobs indicated that he would be in the grass area in front of his business he would like to open up an area for outdoor seating. The state liquor board requires a permanent barrier be put up and it is difficult to find any standard fencing under 3 ½ feet in height which is why he is requesting a variance. Mr. lafigliola closed the public hearing at 7:33 p.m.

1. Planning & Zoning Case #13-2018 - A request made by John Jacobs, owner of 7932 Main Street, (Olde Wine Cellar) PP# 291-19-004 for a conditional use permit for outdoor seating areas to be located in the front and back of the Olde Wine Cellar pursuant to Section 1252.03(5)(b); a variance of 1 feet to Section 1274.03(a)(1)(A) to permit a fence to be 4 feet in height in lieu of the maximum 3 feet.

Mr. lafigliola stated that he received a memo from Mr. Smerigan dated April 12, 2019 which states: "due to a schedule conflict I will be unable to attend the regular Planning & Zoning Commission meeting on April 17th. I am therefore providing a written report of my comments on the two agenda items. This is a public hearing for a conditional use permit to permit outdoor dining in both the front and rear of the existing facility. The Commission inadvertently approved this application earlier without holding the public hearing so this is essentially a redo of that earlier discussion. The proposed dining is a positive addition to this establishment that is consistent with the city's overall plans for the downtown. Since alcoholic beverages will be served state law requires that the dining area be fenced. The Commission previously attached stipulation regarding the nature and location of the required fencing. I recommend that the Commission once again grant approval with whatever fencing criteria you deem to be appropriate."

Mr. lafigliola asked if there was anything additional that Mr. Jacobs would like to discuss this evening. Mr. Jacobs replied no. Mr. lafigliola indicated that Mr. Jacobs did appear before the Architectural Board of Review and asked what that board determined. Mr. Jacobs indicated that the ABR board did not approve the vinyl fence and indicated that the

fence must be wood and that they did prefer the picket fence as opposed to the split rail fence. The ABR board would also like the fencing to match the color of the existing building.

There was a discussion regarding the size of the area being proposed for the outdoor seating and the previous conditions.

Mr. Iafigliola moved to **approve** a conditional use permit for outdoor seating areas to be located in the front and back of the Olde Wine Cellar pursuant to Section 1252.03(5)(b) with the following conditions: (1) the hours of operation be limited to no later than 10:00 p.m. Thursday, Friday, Saturday and Sunday evenings; (2) that the aesthetics of the perimeter fence as required by the State of Ohio be in accordance with the Architectural Board of Reviews approval on April 11, 2019; (3) the overall size, which is currently proposed at 48' x 40' be approved by the city engineer; and pursuant to Section 1274.03(a)(1)(A) a variance of one (1) foot to permit a fence to be four (4) feet high in lieu of the maximum three (3) feet; Mr. Haviland **seconded**. Poll: 5 ayes; 0 nays. **Motion carried**.

2. Planning & Zoning Case #10-2019 - A request by Mark Kopcienski, representing WXZ Residential Group/Falls Pointe, LLC for review of revised grading and landscaping plans for the PRD Development Plan approved by Planning and Zoning Commission on 01.16.2019.

Mr. Kopcienski stated that in the course of construction we have more dirt than anticipated. He walked around the area with members of Falls Pointe Cluster Housing Association III as they were looking to plant some trees for additional screening between their homes and the new to-be-built homes. He indicated that an agreement has been reached with the HOA members to take the existing mounds and augment and reshape them. The mound behind Pepper Tree Lane will be raised to between five and six feet and expanded on our side of the development. We will raise them at the same slope and expand onto the Falls Pointe Preserve property. We submitted a plan to Mr. Smerigan and Mr. Sheehy; and Mr. Sheehy had concerns over the amount of cover on the top of the sanitary sewer pipe; we then revised the plans and resubmitted them to Mr. Sheehy which gently ditches out a little pathway through the middle of that mound to limit the amount of cover to 13 feet, to address his concerns.

Mr. Iafigliola read into the record Mr. Smerigan's comments (see attached); Don Sheehy's email dated April 11, 2019 (see attached); Don Sheehy's email dated April 12, 2019 (see attached), which is in reference to the revised plan submitted; letter from Renee Vlasuk dated March 31, 2019 (see attached).

Betsy Buxton 9455 Ravinia Drive, stated that she abuts the property in question. She is the secretary of the HOA board and has taken a lead role in speaking with the residents that abut the property. She stated that through emails this mounding was discussed,

approved and the board is in agreement with the contractor. Along the way the board negotiated with WXZ, to a very favorable contract that Mr. Kopcienski will place in writing, which will include not only helping to pay for some of the trees that will be planted but also making it possible for the HOA to purchase additional trees through the supplier Mr. Kopcienski deals with when he gets to the point of planting trees in the development. She indicated that the HOA members are grateful to him for that opportunity. The developer will also assist in the plantings for the HOA. She indicated that this has been a win-win-win-win for the association.

Mr. lafigliola asked Ms. Buxton what the HOA's expectations were from the developer. Ms. Buxton indicated that WXZ will deliver a check to the board towards the purchase of trees; WXZ will also make it possible for the board to work with their landscaper when the time comes to purchase trees; WXZ has agreed that their landscaper will plant the trees that the board purchases; and included in the trees that the board purchases are not only what we can purchase with the money from WXZ but what the board will also contribute towards the purchase of trees that we were already planning on purchasing; in addition to that whatever any of the private residents would be willing to purchase out of their own pocket to plant in this area. Mr. lafigliola stated that it sounds that both parties are in favor of this agreement. If a motion was approved, he believes it would benefit both parties to have some level of detail as to what they are expecting. For example, the applicant completes the mounds and plants the trees but the residents are not happy with some detail, the lack of information for planning commission to consider all we can say is that the association is in agreement. He stated that Ms. Buxton listed what he believes are important clauses and asked for more detail in order to include some of the information in a motion. Ms. Buxton indicated that there is a partially written contract that Mr. Kopcienski drafted but could not be completed until a dollar amount was agreed upon which happened late this afternoon. So, there is a written contract that WXZ will provide the board which will outline the terms she just mentioned. The board is fully aware of what is in the contract and can provide the city with a copy, if necessary.

Mr. Pehanic indicated that the agenda item addresses the regrading and landscaping plans, we are getting into too much detail. Mr. lafigliola replied if the agenda item is approved there is no clause to protect the resident. Ms. Buxton stated that there is a commitment about grading and storm drainage. The number one concern of the property abutters, in order for us to approve the contract, was that there would be no impact on storm drainage and WXZ has drafted that in the contract as a guarantee. Mr. Kopcienski stated that when the first grading plan was submitted and discussed with Mr. Sheehy and Mr. Smerigan and indicated that this was a private agreement between two parties since it is not within our subdivision it did not matter, but Mr. Sheehy and Mr. Smerigan stated that it does matter to the extent that it is really a buffering. They asked that we submit and application to appear before the commission so we did but only to the extent that it effects the Falls Pointe Preserves PRD approval. The approval of the mounding and reshaping

that is before the commission has been agreed to with a private contract and we are asking the city to agree to the conditions which were addressed in Mr. Smerigan and Mr. Sheehy's letters. The water will go on either side of the mound the way it always has and a structural situation on the city's sewer were all addressed and that is really what the city can and should act on. We have made a private agreement with the HOA for their open space for landscaping on private property that does not have anything to do with a new PRD. In fact, his agreement with the board after multiple discussions with individual homeowners is when he bids landscape contractors for all the trees he has to plant, as required, we agreed to bid the association's trees as well in order to hopefully get better pricing. The agreement is we will agree to a dollar amount to give the HOA and the HOA will hire the contractor after bidding and that contractor will be responsible to the HOA not to us. So, after the mound is completed and planted, we are finished. The mound will put back to the way it currently stands with mowable grass and subsequent to that the HOA will plant trees. That is really the essence of what we are here to discuss and ask for approval, understanding that the homeowner's association and affected homeowners have agreed to the mound reshaping that is not on the property of Falls Pointe Preserve but does affect the aesthetics. Mr. lafigliola stated that he is not trying to figure out the terms of the private agreement all he is looking at is trying to protect the applicant and the residents should something not meet your expectations. As he reads the agenda, if this is approved as written, there is nothing in here that states Mr. Kopcienski needs to comply with the private agreement. Mr. Kopcienski indicated that there is a condition on the HOA's approval and that leads to the commission asking the homeowner's association if they are satisfied with the private terms to which they have agreed with WXZ. Mr. lafigliola stated that the first question protects the residents but the second statement protects the developer because you also need protection as well. Mr. Kopcienski indicated that it is immaterial if we go on record and state that we have offered the HOA a sum of money for trees and to mound the dirt, at that point we are essentially done. We will also give them pricing which they could choose to use or not and they can spend the money on trees or a gazebo. These are in fact the terms, and as long as we are in agreement with those terms and they have been made clear to the commission he believes that is enough. Mr. lafigliola indicated that he is just trying to find a way to get that on the record.

Mr. Pehanic stated that the only reason we are here is because in WXZ's effort to move dirt they found more dirt than needed and is proposing to reshape the mound, nothing about landscaping. This particular agenda item should only address the remounding of the area and what comes of the landscaping is beyond the original intent of the applicant appearing before the commission. Mr. Kopcienski indicated that it is outside the scope to have influence or dictate what, when, how or if trees get planted on top of the reshaped mound to the extent that the reshape mound changes the aesthetic and the overall planning concept of what we are doing at Falls Pointe preserve. Mr. Pehanic stated that he believes the Commission should not incorporate the money issue into this particular item.

Mr. Haviland asked Mr. Iafigliola if he is trying to get the private agreement referenced in the motion without going into detail. Mr. Iafigliola replied yes, because if this is approved and residents do not support it then the Commission would be tasked with the residents impacted.

Mr. Thompson stated that the agenda items states revised grading and landscaping plans, we have seen the grading plans but have not seen any landscaping plans other than there is a separate agreement regarding some type of landscaping. Mr. Kopcienski stated that he does not believe his application or his letter states anything about landscaping. He stated that in his conversations with Mr. Smerigan he mentioned landscaping and is sure that is why it was included on the agenda, but that is not why he is present tonight, he is here for the grading plans. He stated that the email from the board and Ms. Buxton's comments tonight indicate that the private agreement was approved by the HOA and Ms. Buxton also indicated that the board was happy with the terms of the agreement. He believes that should be sufficient for the Commission. He does feel that the landscaping language on the agenda should be removed because he is not present for any type of landscaping approval.

Mr. Iafigliola moved to **approve** docket item #10-2019 a request by Mark Kopcienski representing WXZ Residential Group Falls Pointe LLC, for a review of the revised grading only for the PRD development plan approved by the Planning & Zoning Commission on January 16, 2019 with the following conditions: (1) the approval of the revised grading plan is subject to a private contract finalization with the Falls Pointe Cluster Housing Association III, who is most affected by this development; (2) that this development will provide no change to the existing drainage patterns; Mr. Haviland **seconded**.

Ms. Buxton indicated that she does appreciate what the Commission is attempting in light of the history that we have had in the past years with K. Hovnanian and the mess they left behind. There are many residents on Ravinia Drive that do not feel that this entity was protecting them so she appreciates this effort. She feels that City Hall has the resident's backs through this process. She fully trusts WXZ and Mark Kopcienski but she does appreciate the extra effort. Poll: 5 ayes; 0 nays. **Motion carried**.

COUNCIL LIAISON REPORT – No Report

OTHER BUSINESS: Mr. Iafigliola stated that he and Mr. Thompson, as Chairman and Vice Chairman, were invited and did meet with Mayor Graven and Law Director Berner regarding some issues involving the Planning & Zoning Commission. He would indicate that it was entirely a friendly meeting as they were looking for information and had some general questions about the operations of the Commission. As a general statement, one thing that was discussed, among other issues, is making sure, in addition to the seven commission member packets, that we also have an extra full packet available at the table

should anyone come in and want to see anything in order to expedite the question "does anybody not have anything" this allows the applicant or an interested party information to review. Mr. Bemmer asked if the Commission had taken any sort of review of the Planning & Zoning Code, which his limited time on the board we have not nor have we been encouraged to do so. He indicated to Mr. Bemmer that the Commission has taken up review of the master plan as he believes it is important for the commission to review and consider. He stated that Mr. Bemmer asked if there were any questions, one of the questions posed was that he would like some guidance from the administration on how much of an active role they expect the commission to take in general affairs, such as reviewing the planning and zoning code. For example, the Commission always has within its authority to say ask Council, via motion or other communication, items we believe are problematic which is also why Mr. Haviland serves on this board to take concerns back to Council. Some of the questions asked were difficult to answer because the Commission does not see eight of one kind of issue where we would have some sort of track record as we have very different issues each time, from his experience on the board. Mr. Thompson stated that a lot of times communications from either Smerigan or Sheehy do not always get sent to the applicant and the administration will make sure those communications are now sent via email. We had some concerns because we heard there was an issue regarding making copies, but in reality, they are public documents and it helps if the applicant has the same information that we have which is why Mr. Iafigliola is very thorough when going through that exercise. He knows that it is sometimes redundant but by the same token he has sat on this board in some very contentious hearings where there have been court reporters and present so it does help to identify documents so everybody is on the same page that way no one is being slighted. This also gives them the opportunity if there are any issues they can already be addressed before getting to the commission which makes us more efficient. Typically for the most part been this is a very passive board we've never been asked before to look at the zoning code and make any recommendations or changes to Council and maybe there are some things we should be taking a look but normally that came down from council as a request to look at a particular part but Mr. Bemmer is suggesting that if we see something that is problematic we can review and make a recommendation too Council for approval. Mr. Iafigliola stated that he does remember one instance where Mr. Smerigan brought an issue to our attention and then we provided a motion to Council. Mr. Thompson stated that this dates back to when he was on Council, there is no zoning classification for public buildings, for example the fire station, this building or the new service garage. That is one of the suggestions that maybe we should have some sort of zoning for public lands. Mr. Iafigliola stated that he would ask Mr. Haviland to consider asking Council if there is something they would like the Commission to review in order to be respectful of the members time and also indicate that we are reviewing the master plan.

Mr. Iafigliola stated that he would like to ask Mr. Bemmer a particular question regarding when we administer the oaths to applicants. He understands why and how it works but would like to know if there is anything else we should do and if there is ever a point when

you would take an individual "off of oath." You would like to think they are always telling the truth but what if you know they are not telling the truth. For example, one of the commission members has experience either professionally or personally and someone answers a question but you know it is not correct. The applicant can simply say he misspoke but, if we base decisions on testimony that may or may not be correct it seems it would be best to nip it there rather than let the legal service taken care of it two years down the road. This may never come up but he would like to know what it exactly mean's when somebody's under oath. Mr. Pehanic stated that 90% of the residents that come before the Commission requesting a variance and are put under oath it is the first time that has ever happened to them so they are going to tell the truth. You will find exceptions but most of these residents are probably "iffy" coming before the Commission so the oath has an impact. Mr. lafigliola stated that if we are asking them to tell the whole truth but you know that the truth is incorrect what do we do.

Mr. Pehanic stated that he was excused from the last meeting but was pleased to read how the city handled the bell issue.

APPROVAL OF MINUTES: Mr. Haviland moved to **approve** the meeting minutes of April 3, 2019 as amended; Mr. Thompson **seconded**. Poll: 3 ayes; 0 nays; 2 abstains (Pehanic, Thompson). **Motion carried**.

ADJOURNMENT: Mr. lafigliola moved to **adjourn**; Mr. Thompson **seconded**. Poll: 5 ayes; 0 nays. **Motion carried**. Meeting adjourned at 8:42 p.m.



Planning & Zoning Commission Clerk

5.1.19

Date



Planning & Zoning Chairman

5-1-19

Date

Tactical Planning, LLC

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geosmcrgan@gmail.com

TO: Olmsted Falls Planning And Zoning Commission

FROM: George Smerigan, City Planner 

DATE: April 12, 2019

RE: **April 17 Agenda Items**

Due to a schedule conflict, I will be unable to attend the regular Planning and Zoning Commission meeting on April 17th. I am therefore providing this written report of my comments on the two agenda items.

Case No. 13-2018 John Jacobs / Olde Wine Cellar – 7932 Main Street

This is a public hearing for a Conditional Use Permit to permit outdoor dining in both the front and rear of the existing facility. The Commission inadvertently approved this application earlier without holding the public hearing, so this is essentially a redo of that earlier discussion. The proposed outdoor dining is a positive addition to this establishment that is consistent with the City's overall plans for the downtown. Since alcoholic beverages will be served, State law requires that the dining area be fenced. The Commission previously attached stipulations regarding the nature and location of the required fencing.

I recommend that the Commission once again grant approval with whatever fencing criteria you deem to be appropriate.

Case No. 10-2019 WXZ Residential Group/Falls Pointe, LLP – Falls Pointe Preserve Subdivision

The Commission granted final development plan approval for this final phase of the Falls Pointe PRD. The applicant is returning with a request to modify the landscaping and grading plans to permit the construction of a screen mound adjacent to the homes on Ravinia Drive north of the Pepper Tree stub. Since this is considered a minor change, no hearing or notice is required. This is an

enhancement that will provide better screening for those current residents. The Homeowners Association for Ravinia Drive has indicated its approval of the proposed change, as have the residents most directly impacted. The City Engineer has reviewed the mounding and grading changes to insure that there will be no drainage problems or issues with regard to underground facilities. This is a positive change to the project as the mound will provide a more substantial and permanent buffer than merely planting trees.

I recommend that the Planning and Zoning Commission grant approval for the proposed modifications to the landscaping and grading plans for the Falls Pointe Preserve PRD.

Angela Mancini

From: Don Sheehy <sheehy@cvelimited.com>
Sent: Friday, April 12, 2019 10:51 AM
To: Mark Kopcienski; Angela Mancini
Cc: George Smerigan; Aimee Stone
Subject: RE: Falls Pointe Preserve

Mark,

Yes, this addresses my concern.

Thanks,
Don

From: Mark Kopcienski <MKopcienski@wxzdevelopment.com>
Sent: Friday, April 12, 2019 9:11 AM
To: 'Angela Mancini' <clerkcouncil@olmstedfalls.org>
Cc: Don Sheehy <sheehy@cvelimited.com>; George Smerigan <geosmerigan@gmail.com>; Aimee Stone <building@olmstedfalls.org>
Subject: RE: Falls Pointe Preserve

Folks,
Subsequent to our pre construction meeting last Tuesday April 2nd our engineer modified the mound reshaping plan specifically to address Don's comment regarding the height of the mound over the existing sanitary sewer. Attached is that revised plan. I will bring copies to the meeting next week in case the PC members would like to look at it.
Have a Nice Weekend,
Mark



Mark G. Kopcienski
mkopcienski@wxzdevelopment.com
C: 440-476-9867

From: Angela Mancini [<mailto:clerkcouncil@olmstedfalls.org>]
Sent: Thursday, April 11, 2019 9:20 AM
To: Mark Kopcienski <MKopcienski@wxzdevelopment.com>
Subject: FW: Falls Pointe Preserve

Mark =

Just as an FYI - please see the City Engineer Don Sheehy's comments below.

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From: Don Sheehy <sheehy@cvelimited.com>
Sent: Thursday, April 11, 2019 9:00 AM
To: Angela Mancini <clerkcouncil@olmstedfalls.org>
Subject: RE: Falls Pointe Preserve

Hi Angi,

I am not opposed to the proposed mounding plan. I have discussed the height of the mound over the existing sanitary sewer with the developer, which may be a minor field adjustment of the plan.

I would recommend approval.

Thanks,
Don

From: [Renee Vlasuk](#)
To: [Mark Koppieski](#); [Devon Wiley](#)
Subject: FPCH III
Date: Sunday, March 31, 2019 9:07:08 PM

Mark,
FPCH III Board, and the residents directly affected, have all agreed to WXZ plan to increase the elevation of the common area between FPCH III and the new development, FP Preserve. In agreeing, we also understand that WXZ will assist us with trees for this area at the appropriate time.

Renee Vlasuk
At-Large FPCH III
Board of Directors