



CITY OF OLMSTED FALLS  
PLANNING & ZONING COMMISSION  
MINUTES  
JUNE 21, 2017  
7:30 PM  
COUNCIL CHAMBERS

Commission Members Present : Brett Iafigliola, Bob Sculac, Michelle Hawkins, Gary Pehanic, Fran Migliorino, and Tony Budak.

Others Present: George Smerigan, City Planner, Santo Incorvaia, Asst. Law Director, Bill Boyer and Ken Fisher. Audience: 7

Meeting was called to order at 7:37 p.m.

1. **Planning & Zoning Case # 10-2017** – Lot split/consolidation of PP Nos: 281-19-005 & 281-19-007 (old library).

Alex Russo with Cresco Wakefield will represent this agenda item. Mr. Russo indicated that the city engineer has approved the lot split. The property is under contract and the buyers will be completing their due diligence in the next 45 days, once completed the sale will move forward.

Mr. Russo stated that the building will be sold to a group interested in opening a restaurant with a small parcel of land. The city will retain and maintain the green space and parking lot. There were strong restrictions placed into the purchase agreement as far as use. If the owners decide to resale the property the city will receive first right of refusal.

Mr. Smerigan indicated that when the Commission made the recommendation to Council to sell the property a recommendation was to keep the parking area under city control which is what has transpired.

Mr. Iafigliola moved to **approve** the lot split/consolidation of PP# Nos: 281-19-005 & 281-19-007; Mr. Budak **seconded**. Poll: 6 ayes; 0 nays. **Motion carried**.

2. **Planning & Zoning Case #06-2017** – Remand of application for reconsideration of the Tree Preservation and Management Plan on behalf of “Busby Creek” 52 acres at 7820 Mapleway Drive made by Planning & Zoning Commission on May 3, 2017.

Ken Fisher, Esq., 2100 Terminal Tower, Cleveland, Ohio and is present on behalf of the applicant. He stated that the purpose of the applicant’s request is to revisit and hopefully amend the approval from the May 3, 2017 Planning & Zoning Commission decision, which approved a tree preservation and management plan as submitted. Again, the applicant was not present at that meeting. The decision extended the do not clear limit to 100 feet, the entire length of the northern property line, which the applicant has objected to, for legal reasons. The applicant has requested, as a matter of compromise, 25 feet from the northern property line and as of late this afternoon, Mr. Smerigan opined that the plan as submitted, based on his calculations, cannot include the “street trees” which would be planted in the right-of-way area and based upon his calculations, the plan as submitted with 25 feet off the northern line as part of the canopy is 22.7% which creates a dilemma. Out of respect to Mr. Smerigan, the

applicant did not receive a copy of Mr. Smerigan's report until this evening. He stated that his client does object to the findings, methodology and the fact that the street trees, which would be included in a development plan, and we respectfully suggest is not part of the approval process, at this juncture, for the TP&M but would be part of a final plan approval process and should not be considered. Obviously the plantings would occur before any building permit is issued and would be a condition of final approval in a development plan. But, again for purposes of TP&M, which is what is in front of the Commission tonight, the plan, as submitted, does comply. The arborist retained by Busby Creek was correct in his inclusion of the street trees in the canopy. In step with Mr. Smerigan's findings of today June 21, 2017, the applicant will go ahead and agree with purposes of revising the May 3, 2017 approval a 45 foot do not clear limit along the entire length of the northerly property line and formalize that with the understanding that the applicant will reserve the right to apply for a 2.33% canopy variance to reduce the do not clear limit to 25 feet along the entire length of the northerly property line which would be applied for, advertised and perhaps heard on July 19<sup>th</sup>, which would be before recess and that is something the applicant would have the right to apply for. So, we want the board to consider revising its findings from May 3<sup>rd</sup> to reduce the do not clear limit along the entire length of the northerly property line from 100 feet to 45 feet which would comply with the calculations George Smerigan made with the understanding, again, that the applicant reserves the right to apply for a 2.33% canopy variance at a future meeting assuming the application is made.

Mr. Incorvaia stated that if there is a desire to make a change a motion to reconsider will be needed, if that motion passes, the Commission can move forward with consideration of a change. Secondly, on May 3, 2017 the Planning & Zoning Commission was presented with a plan that was to scale, we did not have accurate information as to the percentage of canopy. Based on his observations and discussions at the meeting, he believes the Commission was attempting to accommodate the applicant and allow him to move forward with a 100 foot natural undisturbed area to the north, which would of allowed the applicant to move forward with his project and also ensure that there was a 25% canopy as required by the code. Unfortunately, the Commission did not have an accurate plan during the May 3, 2017 meeting. It is his understanding that the updated plan does not show 25% canopy coverage at this point. It shows that there may be some street trees planted, but, no plan has been submitted nor a conceptual plan, preliminary development plan or preliminary plat. He stated that without any sort of plan the Commission cannot consider what might happen in the future. He stated that there is nothing in the code that prevents the Commission from rejecting this tree preservation and management plan. We do not have an approved development plan presented and the Commission has the option to approve the plan with modifications, even though it is the applicant's contention that the Commission cannot. At some point he believes that the applicant needs to ask for what he wants so it is clear on the record. If the applicant wants a 45 foot natural undisturbed area on the north end of the property then the applicant will need to ask for that and then the Planning & Zoning Commission, if they want to reconsider, can properly make a motion on the basis of what the applicant is requesting.

Mr. Fisher indicated that he will state that the request is for 45 feet in compliance with the report and findings of City Planner, George Smerigan, with the understanding again, that the applicant reserves the right to apply for a 2.33% canopy variance to reduce the do not clear limit to 25 feet along the entire length of the northerly property line.

Mr. Smerigan indicated that he is comfortable if the Commission approves the plan with a 45 foot undisturbed area along the northern property line in order to meet the 25% coverage to get the project moving forward. He has no objection to the applicant reserving his right to seek a variance, which is his right under the law. He would encourage the Commission to approve the tree preservation and management plan with the modification to make the northern undisturbed area 45 feet along the entire northern boundary line.

**Tom Shepka, 9058 Columbia Road**, stated that he is the Chairman of the Shade Tree Commission. He stated that one of the reasons street trees are not counted, not only are they under the city's jurisdiction but you cannot put in a line of them and call that canopy. Tree canopy restoration is based on species of trees and measured per tree not per area. This plan is fine because it designates preserved areas, but, in the future with each individual plan the tree canopy restoration has to be approved by Shade Tree. There is a formula as to how the canopy has to be followed. He would suggest anybody come to a Shade Tree meeting to understand how this whole system works. Shade Tree is actually formalizing this into something that could be handed out to an arborist or landscape architect because they will need to utilize the formula. Again, it is not by blocks but by species of trees and has to be followed throughout each phase of the entire development so this needs to be done the proper way. He indicated that Shade Tree would hold a workshop so everyone will understand how this even works because it is a new term and no one seems to really quite understand it so we will be available to explain how this will work.

**Russ Renz, 26490 Cranage Road**, stated that he was the last house built on Cranage Road in 1995. He stated that no one has mentioned the topography. Before he could begin building his home in 1995 he had to put in sewers. There are trees all around his home, he had the house drawn by an architect and only had to move one tree. But, before he could build there are two sewers 185 feet into his property and 75 feet of his property on the west side, by rules of Olmsted Falls Building Department, he had to put a French drain in 200 feet because of the water. He has a sunken living room and when he looks across the street he looks down on the houses, he doesn't have to worry about flooding as he doesn't have a basement. On the drawing his property is across the street from the bend on the north side. He knows what the water does in his backyard but across the street it is even more. You are going to clear the lot and once you cut those trees there will be stumps and the topography of that whole area is going to drop even lower. Are the plans to fill with fill dirt because that is what bothers him about this whole thing. His lot was surveyed and the surveyors were out there a little over a year ago and the drop from his yard to the fourth house past the bridge going east is 12 feet. Next to his house was an empty lot that he purchased years ago and the surveyor said that they were thinking about using the front of the yard as a lift station, to pump out to Cook Road and a second lift station by the creek going east. So with all that in mind, we are talking about clearing all that land but where is all that water going to go. He understands that the developer has to clear the land but it bothers him even with the 45 foot tree canopy what is the topography of that property as he believes it has to be close to his. His side of the street is low and that side is even lower, if you clear that and dig those stumps out of the ground you will lower that whole area by two to three feet easy that is his concern at this point.

Mr. Pehanic indicated that Mr. Renz is more concerned not his property but the property south of Cranage. Mr. Renz indicated that sewers are to be installed in the next two years and the

plans were changed to lift the sewer up to a different depth and whatever that depth will be you will have minus 12 feet from where his house is. So, when there is a backup situation of water all those homes on Cranage will have sewer backup which is a whole different issue. Mr. lafigliola stated that will be a sanitary sewer project which is different from a storm sewer.

**Bill Eichenberg, 26549 Cranage Road**, stated that we had a heavy rain storm May 27<sup>th</sup> and the rain came down and Minnie Creek gets full. The drains or whatever it goes into can't handle the water and that evening he looked out the window and the water starting to back up from Minnie Creek and the ducks were swimming up towards Fitch Road. The water has no place to go. That is what he is mostly concerned about. He stated that in 2013 the city did a survey for Falls Pointe, it was October 10, 2013, and when he was on Planning Commission the city gave us three places in the city that have trouble with flooding. Falls Pointe is south of us by Schady Road but the problem is that the water from there wonders to the north and ends up in Minnie Creek also.

Mr. Pehanic stated that it appears to him whether it be 45 feet or 100 feet when these trees are removed and the stumps removed the water flow will come north.

**Willis Boyer, 10 Farwood Drive, Moreland Hills, Ohio**, stated that the engineers who drew up his TP&M Plan and have also done the landscape plan for his development plan which we submitted in 2015 but will have to adjust and amend and then resubmit. First, the stumps will not be taken out but will be ground up and left there so the plant material will not disappear. Secondly, the ground will not drop by three feet or so as a result of tree clearing. That is just an imaginary thought as it doesn't happen. He has observed timbering operations like this you replant, regrade and install, if necessary, some agricultural drainage. You plant hay as the hay will absorb a huge amount which is why you plant hay because it helps dry out the land; also it allows sun to get into the site and onto the land which helps dry it out. The trees, as lovely as they, provide a canopy which keeps the sun from getting in there so it tends to keep the area wet and tends to stay wetter longer. So, planting hay, which is our intent, and grading it properly and installing, if necessary, some agricultural drainage will help dry that area out. Ultimately, in our development plan we have a storm water management plan which will include detention basin, etc. The real problem, as this Commission may know, on Minnie Creek is caused by where the water flows under the parking lot of the German Club, which is located in the township they did not require an adequate pipe and that's where the constriction comes. It doesn't come at Cranage it comes back and unfortunately the City of Olmsted Falls has looked at this problem for many years but has not been able to resolve it because it's not in the city proper. We did a complete watershed analysis of the entire Busby Creek watershed many years ago. He thinks that the water shed analysis was submitted to the city back in September of 2015.

Mr. lafigliola asked the applicant and Mr. Fisher what has transpired since the last meeting to make negotiation a possibility. Mr. Fisher indicated that all disputes ultimately get resolved whether administratively, through a court, but at some point they are resolved. This dispute is no different, there was some suggestion and discussion that compromise would be possible on the 100 foot additional do not clear limit that was imposed beyond what was submitted per the May 3<sup>rd</sup> decision. Based on again the objective of resolving the dispute, there were discussions between Mr. Boyer and others about a possible compromise and as a result of

those discussions a detailed plan was submitted showing a 25 foot do not clear limit off the northerly property line rather than the 100 foot do not clear limit that was imposed on May 3<sup>rd</sup>. What's changed again is that Council did not hear the appeal, they tabled it, and based on that there were discussions to resolve the dispute. Mr. Iafigliola indicated that this is the fourth time the applicant has been before the Commission and during Mr. Fisher's opening comments the request is for the Commission to act on Mr. Smerigan's memo to formalize with the applicant's appeal right being held and essentially stated that the applicant will come before the Commission for a fifth time to try and change the decision again. Mr. Fisher stated that there are different procedures; what is being requested tonight is to amend the decision from May 3<sup>rd</sup> wherein a 100 foot do not clear limit was imposed, separate from the plan submitted along the entire length of the northerly property line to 45 feet based upon the memo received this evening from Mr. Smerigan. As part of that we would like to reserve the right to request a variance, which is a separate application, of 2.33%. That is a potential request and would be based upon area variance standards which are set up in the law.

Mr. Incorvaia stated that the Commission has two functions, one as a Planning Commission and one as Board of Zoning Appeals. The application that was submitted was not a variance request and without such an application the Commission cannot act. The code requires 25% canopy and that is what the Commission has the authority to approve. The variance will be a separate issue and everyone even without reserving the right. The best the Commission could do tonight is act on the 25% canopy request, which he believes is the 45 foot along the northerly property line.

Mr. Fisher stated that in the event that the 45 foot distance is approved rather than the 100 foot, the present appeal to Council will be withdrawn, so there is no question procedurally that the 45 foot would be final, again, subject to the rights that the applicant has to apply for a variance. He asked what would happen if Council heard and changed the decision, which they have the right to do, this could end up in court under ORC 2506.01 Administrative Appeal. That is not anyone's intent the objective is to solve the problem. Mr. Iafigliola stated that Mr. Fisher has indicated that the applicant would withdrawal his appeal, to be clear that is the 100 foot appeal, if there is a motion to move with the 45 foot limit. Mr. Fisher indicated that the applicant would withdrawal his appeal of the May 3<sup>rd</sup> decision. He can also state that it would their intention not to appeal the 45 foot do not clear limit. Mr. Incorvaia indicated that the applicant is requesting the 45 foot so there is no appeal to be made, if the Commission grants that request there would not be anything to appeal. Mr. Fisher indicated that reviewing the minutes of May 3<sup>rd</sup> the Commission members were unable to discern the actual dimensions to make calculations as to whether the 25% canopy had in fact been met, therefore, the decision was to approve the plan extending beyond what was included in the submission 100 feet rather than 10 feet off the northerly property line, but it wasn't based upon any kind of analysis. He understands that the Commission attempted to move the applicant's project forward. He stated that actual dimensions have been included in the new submission and the City Planner has reviewed and given his opinion that 45 feet off the northerly property line complies with the 25% canopy requirement and that the street trees cannot be included as our arborist submitted. We do not want to debate that at this point. We do want to bring this matter to a conclusion, again, subject to whatever rights needed to apply for a variance. Mr. Iafigliola indicated that part of the reason for the number was due to the fact that there were no calculations included, so the Commission decided to air on the side of caution.

Mr. Iafigliola asked if there was a way to determine if the buffer areas indicated on the drawing actually included trees. Mr. Smerigan stated that after his review of the property and aerial photos he believes there is tree coverage in each of these areas. However, he cannot certify that it is 100% coverage. The only thing he felt was not permissible to count were street trees on streets that don't exist on a plan that hasn't been approved. To him, once this cutting takes place there needs to be an ability to have a 25% canopy coverage, he believes that the undisturbed areas will provide the opportunity to have a 25% tree canopy and feels comfortable in that but in order to accomplish that you have to make the northern undisturbed area a minimum of 45 feet and that is his calculation based on the review of the plan, in his opinion. Mr. Iafigliola stated that if the Commission indicates that this is a tree preservation plan but there are no trees located in undisturbed areas he is hard pressed to say that is a tree being preserved and should be counted. He understands the logic and believes the dimensions provided to dual purpose of protecting the northern neighbors is reasonable. Mr. Smerigan stated that was part of the issue last time that the evidence submitted by the applicant was insufficient. He believes there are some cleared areas on the property but those areas are shown on the plan. If you look at the aerial photographs of the property there is heavy tree coverage in all the areas that are indicated as being preserved. If you recall we estimated that the minimum requirement would be around 50 feet but the Commission decided that they did not want to make an error on the short side and made it 100. Now, with the better data we can refine that number.

Ms. Migliorino stated that on May 3, 2017 the Planning & Zoning Commission made a motion to approve the TP&M for the Busby Creek Development which would now include a 100 foot do not disturb area on the north side of the property. The Shade Tree Commission approved the initial plan minus the 100 foot. The developer challenged the Planning & Zoning Commission motion and moved to take it to Council on appeal and possible lawsuit. To try and be sensitive to Shade Tree, the residents affected by the tree cutting, and the city and avoid appeals and lawsuits she met with Mr. Boyer to determine if there could be a reasonable solution to the tree cutting project. Without acreage summary on the original plan map to determine if he followed the charter he agreed to prepare a new map which would now include the acreage summary for review by the P&Z and through discussion Mr. Boyer and her agreed to a 25 foot do not disturb area in lieu of the original plan 10 foot do not disturb area. She then requested a meeting with Mr. Eichenberg and he declined he felt it would be a conflict of interest for him. She then requested a meeting with Ms. Sackman, a resident on Cranage, to discuss this as a possibility for agreement to move forward with this project with the new 25 foot do not disturb area. She and Ms. Sackman discussed this at length and she permitted her to walk the property and we came to a middle consensus. Without the advantage of a fully financed approved development plan she then felt this could be a good possibility and we could move forward on this tree cutting project. This is a tree cutting issue and because there is no development plan in place she did believe we had a solution to approve the tree preservation and management plan for Busby Creek. However, after discussing this issue in depth with our city planner and legal counsel and for future development which could be planned and approved she had to slightly modify her course of action on the do not disturb area and with this new analysis information she received this afternoon from the City Planner on the tree preservation and management plan itself the motion she is about to present will increase the do not disturb area from 25 to 45 feet.

**Nicolette Sackman, 26335 Cranage Road**, thanked Mr. Boyer for taking the time to speak with her after the meeting on May 3<sup>rd</sup>. He took a lot of time explaining and answering her questions. She also thanked Ms. Migliorino for coming to her home and reviewing things and she was more than agreeable to find a solution. She does apologize for being late. With the property being developed obviously you want to see the best way it could be developed but also be able to provide some sort of screening and buffering since we don't know what's going in there and being a mixed use you could have commercial use at some point you have to have it somewhere. She is agreeable as to what Ms. Migliorino indicated about working on solutions. Mr. Iafigliola recapped the discussions prior to Ms. Sackman arriving. Ms. Sackman thanked everyone for working on this issue. It is important as we want to maintain the character of the neighborhood as best we can; not having a development plan in place we do not know how long the property will be vacant; what it is that could come forward and when you look at the zoning code for what is permitted on the property it does require a commercial use in that mixed use area and if she was the developer she would put it closer to her end of the street because of Dairy Pak, which is her main concern. Mr. Iafigliola asked if she was in general agreement with the mood and consensus he recapped. Ms. Sackman replied yes and cannot thank everyone enough for taking the time and making considerations and listening to what the residents had to say. She thanked Mr. Boyer for working with the residents as well.

Mr. Iafigliola moved to **reconsider** Planning & Zoning Case No.: 06-2017 to reconsider the Planning & Zoning Commission decision of May 3, 2017; Mr. Budak **seconded**. Poll: 6 ayes; 0 nays. **Motion carried**.

Mr. Iafigliola moved to **approve** the Tree Preservation & Management Plan as presented by the applicant entitled FG01 as dated June 13, 2017 and incorporate, by reference, Mr. Smerigan's memorandum dated June 21, 2017 which modifies the Tree Preservation & Management Plan where the words 25 foot buffer zone are changed to 45 foot buffer zone and the notion of a temporary is struck as it pertains to this Tree Preservation and Management Plan, as requested by the applicant; Ms. Miglorino **seconded**.

Mr. Iafigliola stated that there was a question earlier regarding drainage. He stated that Mr. Boyer indicated that the storm water situation, as it pertains to the run off relative to the neighbor's, would improve by indicating that the hay would dry out the property and the property would receive more sun to help dry it out. He asked Mr. Boyer, if in his opinion, he reasonably feels that is a true statement. Mr. Fisher replied that was Mr. Boyer's position as he stated tonight. Mr. Iafigliola asked if the applicant would be opposed to any sort of comment that he would be obligated to install drainage, if it was determined at some point in the future and the city engineer would be the determining body. Mr. Fisher again referred to Mr. Boyer's comments that a storm water management plan must be submitted as part of final development approval. The plan will be highly scrutinized based upon both federal and state law and will be discussed in detail at the appropriate time, but tonight is not the appropriate time. Mr. Incorvaia indicated that the city engineer may require a storm water management plan prior to a development plan. Mr. Iafigliola stated that it may be important to persuade some of the other concerns that have plagued the city but are not related to your property in terms of flooding. He asked if Mr. Boyer would have any objections including language that would state "installing drainage as determined by the city engineer," if necessary. Mr. Boyer replied that he would as he does not believe it is appropriate with a tree preservation and

management plan. Obviously he will be subject to whatever the city requires. The prior administration contacted him when his section of Busby Creek was clogged with trees that fell and he cleaned up the creek. If there is an issue that is discovered in the future with some new drainage issue he would handle that as well. Almost the entire city of Olmsted Falls has flooding and drainage issues because it's very flat. There is only about 12 inches of topsoil cover and then there is a pretty hard layer of clay which means that it doesn't percolate so we will address that. Again, he does not believe it is appropriate to make that a part of the tree management plan. Mr. Incorvaia stated if the city engineer feels that the sediment control and storm water management is a requirement or issue then that will have to be done as part of this tree preservation & management plan.

Mr. Smerigan stated that the issue of grading and drainage is a separate issue from the tree preservation plan and he understands the concerns and desire to make sure it is correct the drainage and storm water management issue is not included in the chapter that deals with tree preservation and management. It is a separate issue and he would advise the Commission to keep that as a separate issue. The city engineer will observe, as the code permits, and if there are any grade changes he will be on top of it. His suggestion is that it would not be appropriate to include that as part of the tree preservation motion simply because it is not part of the chapter under which this application was made. Mr. Budak agreed.

Ms. Sackman asked when the tree clearing would begin as she is assuming it will not take place until after October because of the Indiana Bat. Mr. Iafigliola indicated that would be something Mr. Boyer could answer after the Commission votes. Poll: 6 ayes; 0 nays. **Motion carried.**

Mr. Fisher indicated that he would like to thank the Commission for their efforts. He knows that Mr. Boyer is anxious after many years to begin the process and obviously he will comply with all rules and regulations as it relates to tree clearing.

**COUNCIL LIAISON REPORT: - No Report**

**OTHER BUSINESS: - None**

**APPROVAL OF MINUTES:** Mr. Sculac moved to **approve** the Planning & Zoning Commission minutes of May 17, 2017; Mr. Pehanic **seconded**. Poll: 6 ayes; 0 nays. **Motion carried.**

**ADJOURNMENT**

Mr. Iafigliola moved to **adjourn**; Mr. Budak **seconded**. Poll: 6 ayes; 0 nays. **Motion carried.** Meeting adjourned at 9:05 p.m.

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Planning & Zoning Commission Clerk

\_\_\_\_\_  
Date

\_\_\_\_\_  
Planning & Zoning Chairman

\_\_\_\_\_  
Date