

**MINUTES OF A REGULAR MEETING
OF THE PLANNING COMMISSION
CITY OF INDEPENDENCE, OHIO
Held in the Council Chambers at City Hall**

7:00 P.M., SEPTEMBER 4, 2007

Acting Chairman Shallcross called the meeting to order at 7:06 p.m., September 4, 2007 and the following responded to Roll Call:

PRESENT: Fred P. Ramos, Mayor
Gregory Kurtz, Vice Mayor
Jack Shallcross
Tom Narduzzi

OTHERS

PRESENT: Gregory J. O'Brien, Law Director
Don Elewski, City Engineer
Jeff Markley, City Planner
Ron White, Economic Development

ABSENT: Dale Lytkowski, Chairman

AGENDA:

Old Business:

Approval of Minutes of Special Planning Commission Meeting held on August 1, 2007.

Approval of Minutes of Planning Commission Workshop held on August 7, 2007.

Approval of Minutes of Regular Planning Commission Meeting held on August 7, 2007.

- 1. 6990 Brecksville Road, PPN 563-06-002, 141 & 142 – Lot split and consolidation to create four parcels.**

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New Business:

2. **Bartlett Cove, PPNs 563-01-043, 563-01-044, 563-01-045 & 563-01-046**
– Lot split and consolidation of 4 existing Sublots in Phase 2, Section 3 of Chestnut Woods Subdivision.

Other Business:

3. **Chapter 1141.021 Class U-2 Uses – Senior Citizen Residential Development** – Scheduling of Workshop to discuss and reconcile the various ordinances with regard to senior housing.

Acting Chairman Shallcross asked for the approval of the minutes of the Special Planning Meeting held on August 1, 2007.

A motion was made by Tom Narduzzi, seconded by Mayor Ramos to approve the minutes of the Special Planning Commission meeting of August 1, 2007.

**ROLL CALL: Yeas: Ramos, Shallcross
 Nays: None
 Abstain: Narduzzi, Kurtz
 MOTION CARRIED**

Acting Chairman Shallcross asked for the approval of the minutes of the Regular Planning Commission meeting of August 7, 2007.

A motion was made by Tom Narduzzi, seconded by Mayor Ramos to approve the minutes of the Regular Planning Commission meeting of August 7, 2007.

**ROLL CALL: Yeas: Narduzzi, Ramos, Shallcross, Kurtz
 Nays: None
 MOTION CARRIED**

Acting Chairman Shallcross asked for the approval of the minutes of the Planning Commission Workshop held on August 7, 2007.

A motion was made by Tom Narduzzi, seconded by Vice Mayor Kurtz to approve the minutes of the Planning Commission Workshop of August 7, 2007.

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**ROLL CALL: Yeas: Narduzzi, Kurtz, Shallcross, Ramos
Nays: None
MOTION CARRIED**

Acting Chairman Shallcross stated that the Chairman is out of town so he will be filling in his shoes as best he can.

6990 Brecksville Road, Elaine Kukawka – Acting Chairman Shallcross stated that the Commission received a letter from the Law Director which was sent to Ms. Kukawka. This letter did summarize some of the things that were discussed previously regarding the issues and what was being done to resolve them.

Law Director O'Brien stated that with regard to the issues raised last month, he spoke to the applicant. The request to the applicant was that she will deed to the City, and the City will formally dedicate approximately 300' of the driveway that intersects at Brecksville Road and presently serves the two existing residential properties in that area. Except for the encroachment of the driveway ingress and egress, a 100' conservation easement will be established along the entire northern boundary line, and a 35' conservation easement along the southern proposed boundary line of proposed Sublot 4. There will be a restriction placed in the deed of proposed Sublot 4 that only one residential dwelling will be constructed on that particular subplot, and that any dwelling shall be constructed at least 250' from the western property line. The driveway serving proposed Sublot 4 shall be designed and constructed to move away from the northern boundary line of the property as practically feasible. The City did indicate that it would provide assistance in the construction and the installation of the swale and storm sewers to abate area surface water runoff for proposed Sublot 4 in an attempt to assist with the property owners on water issues.

Vice Mayor Kurtz asked the Law Director to go back to the point about the driveway. The Law Director said that the driveway would be moved away from the northern property line as practically feasible. The Vice Mayor wanted to add "at no time further than whatever it would be – 100' feet in other words 125'. It has to be moved out of that easement within 125' or a number". The Law Director stated that if that's what the Engineer says is reasonable for safety reasons for the driveway. The Vice Mayor stated that he can determine that. It could even be shorter. The Vice Mayor wants it at no point greater than a certain point. It looks like 125'. Vice Mayor Kurtz stated that it's the first 50' that concerns him, the part that's in the easement. He said he is comfortable with the language the Engineer and Planner can adapt. City Planner Markley stated that the objective for that is to get it down into Parcel 4 as quickly as you can; but also to have some flexibility to avoid some of the larger trees that exist there. The Vice Mayor is comfortable with that.

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Vice Mayor Kurtz asked if it was mentioned about the vacating of Eugene Drive. The Law Director stated that we would do that; we don't need this applicant's permission. Council would do that. The Vice Mayor wants it to be one of the conditions that we are going to vacate Eugene Drive. He wants to make it a condition of approval so Council knows that it was one of the conditions of the approval.

Chris Iula had a question about a detached garage being built on Sublot 4. Law Director O'Brien stated that nothing can be built in the conservation easement. Mayor Ramos stated that no trees can be cut down either. The Law Director stated that they can have a garage or shed just as long as they stay out of the conservation easements – 100' to the north and 35' on the south. They are free to do whatever they want with their property within the codified ordinances. A resident asked if they could build within 15' of the western line. Law Director O'Brien stated that on the western line there is a restriction that they can't build the residential dwelling until 250'. The City's code prevents them from building any out structure, and if there was an attached garage; that would be part of the residential dwelling which would be susceptible to the 250'. The City doesn't allow out buildings in front of dwellings; the code takes care of that.

A resident asked if anyone considered snow plowing on Archwood. Vice Mayor Kurtz stated that right now when you snow plow on the new East Archwood, it would just congregate at the end of the road. Right now it congregates on the west actually. It congregates at the end of the road, but we are putting in a private drive. What the City is going to have to do is back down and plow the other way. They won't be able to push it into the end anymore. Vice Mayor Kurtz asked the Engineer how much road does the City have beyond the end of the pavement. The Engineer stated that there is none. Vice Mayor stated that there might need to be a 25' easement at the western end to accommodate a snow plow just to back up. If the City has to share in that improvement, that makes sense. City Planner Markley stated that there are utility easements. Vice Mayor Kurtz stated that there is a storm sewer in there so that would allow the City ingress and egress. The City has to make sure that whoever develops that, it accommodates the ability of the City to put a truck on it.

Mr. Narduzzi asked where the snow is going to go on Archwood. Vice Mayor Kurtz stated that in the past the snow plow would come in and the property owner was accommodating in letting them go around the circle and then back out. If someone else buys that and the City is no longer allowed to do that; then the City will have to push it right to the end of the right-of-way which is past the driveways for both properties. Vice Mayor Kurtz stated that you have another 50' beyond the driveways. The Engineer agreed.

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Acting Chairman Shallcross asked if the whole plan accommodates the swale in the back that the people on the two cul-de-sacs will be able to drain their backyard water and connect to that. The City Engineer stated that the swale is basically to keep any drainage from this property going toward the peoples' property. It can also be used by the people themselves if they have any drainage problems at the rear of their property to tie into it. Acting Chairman Shallcross stated so if they have a problem they can construct something to tie into the swale. The City Engineer stated if they have problems at the rear of their property they can. Mayor Ramos asked if it would be a swale or a pipe. The Engineer stated it would be a swale. Acting Chairman Shallcross wanted to know how they can assure themselves that these are in conformance with the swales that they would put in their backyards. If someone wants to tie into the swale, they will have to contact the Mayor's office or Engineer's office to make sure that it will be done in compliance. Law Director O'Brien stated that they will also have to get a change of grade permit. The City will maintain the swale along the northern property line. Vice Mayor Kurtz stated that if someone wants to tie in any of those houses that are experiencing problems, they would just apply to the City Building Department. Then the Engineer would make sure that they would put it in based on the criteria. The Vice Mayor asked the Engineer if the City could do something while they are constructing this swale on site to tie in the property owners if they want at that point. The additional labor is insignificant; if you are doing this swale already. City Engineer Elewski stated that if the property owners would tell him where they want it, and they can do it.

Acting Chairman Shallcross asked about the timing of putting in this swale. Will it begin before fall is done? Vice Mayor Kurtz stated that it should be done in the fall because you can get vegetation then. Acting Chairman Shallcross stated that perhaps if the residents want to tie into the swale, they should get a notice from the City and then let the City know as soon as possible so that they can make sure that the Engineer will do that.

Alicia Sogor asked about each home having a storm sewer on Elmerge. It was mentioned about changing the grade on this particular property. She stated that each home from Brecksville Road up to the division of Dora and Elmerge seems to have a storm sewer in front of it. That takes care of their water issues in front of their homes. If the grade gets changed on this property, how does that impede or benefit the rest of the homeowners that the swale may not be able to accommodate. Once you start changing the grade of this property, don't you have to bring in the Army Corp. of Engineers and provide permits for that. City Engineer Elewski stated that the grade is not going to change on that property. It will just be changed for the swale. Mrs. Sogor asked how much will it be changed. City Engineer Elewski stated just where the swale will be. He stated 1 ½ to 2'. The sides will be a 3 to 1 slope. Mrs. Sogor stated that once the property goes in, the established trees that are there (inaudible). What can be done as a second tier to

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accommodate the first tier of natural conservation? City Engineer Elewski stated that there will be a 100' conservation easement. Mrs. Sogor asked if there is anything else that can be done to accommodate that change. City Engineer Elewski stated that the easement will restrict anybody from cutting any trees down. Mrs. Sogor stated that each of the homes on Elmerge has storm sewers, and that accommodation has been made. She wants to know what else can the City do. Vice Mayor Kurtz stated that Mrs. Sogor has storms in front of her street too. She stated that she does not even have a catch basin directly in front of her home. She has continuous water in front of her home. Vice Mayor Kurtz stated that Mrs. Sogor has curb and gutter, and they are supposed to collect everything and take it. Mrs. Sogor is asking what else can be done to help accommodate that problem. Mr. Narduzzi stated he thinks this problem is totally different than what is happening to Mrs. Sogor. She stated that in the back, although that conservation area will be provided and a swale will be provided within that area; is there going to be an additional buffer. Can there be an additional buffer behind that conservation area? City Engineer Elewski stated that it is a 100' buffer. Mrs. Sogor asked if there is something in addition that can be done. Vice Mayor Kurtz stated that all new streets have a storm sewer. Mrs. Sogor asked if there is a possibility that the City can put in a second tier of a riparian. Vice Mayor Kurtz stated that they originally went from 35' to 50'. The applicant was gracious enough to give the City 100'. Mrs. Sogor wanted to know if there could be additional trees put in there. Vice Mayor Kurtz stated that at some point they have to weigh what is reasonable. In this case, from his perspective, he thinks that if they can get one house with all the conservation easements and the ability to put the City's stormwater drainage in, the ability to eliminate the possibility of a subdivision with multiple houses, the vacation of Eugne Drive, the dedication of Archwood; it's pretty comprehensive. Mrs. Sogor is looking at in terms of water dispersion; if the swale is preventative, she is looking at an additional preventative because those trees will be gone. Vice Mayor Kurtz stated that he does not know if they are going to be disturbing a lot of trees. The Engineer stated that they weren't. Vice Mayor Kurtz stated that they picked an area where there is a minimal disturbance of the existing vegetation. There is one spot that you can go through there that they have identified that is pretty open because of the sanitary sewer line. They are not going to disturb the trees. That is the intent of the 100' wide area so there can be a minimal impact on the existing vegetation. No one wants to take down trees. Then after the City gets the conservation easement, you can't take down trees.

Mayor Ramos stated that the only concern he has is about how the folks on the cul-de-sacs are going to tie into the swale. When the Mayor was out there by Dr. Gervasi's, what happens is the water comes down and starts to head north and starts to pool there. The Mayor's concern is how is the water going to end up going south. Vice Mayor Kurtz stated that it is suppose to go north along the houses; there is a swale between the houses.

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That was how it was originally designed. Through the homeowners doing landscaping and doing their thing, it eliminated the swale. That is why a lot of the water congregates in the back. This is one vehicle that can be put in place to address that. There won't be that migration of water coming across the property anymore.

City Planner Markley stated that the caveat to the whole backyard scenario is if the swale isn't as deep as the lowest point of the backyard, there won't be any water going to the swale. Mayor Ramos stated that what he is asking is whether or not they need to, with the owners' consent, that they need to grade that so that the water does go. City Planner Markley stated that if you grade the backyards, you will have to remove the trees. Vice Mayor Kurtz stated that you might find spots to be able to create a small swale from their property to the swale. You don't want to disturb the trees and re-grade the property. City Planner Markley stated that what he saw in walking around back, the property owners individually can determine where their collection point is. If they have a problem across the length of their backyard, they could do something like a French drain or a gathering point and then punch it through to the swale. The caveat is if that point is higher than the swale itself. Mayor Ramos stated that on the properties he saw the water was coming over and all of a sudden it was just going right across and then going toward the street. Vice Mayor Kurtz stated that there will be an opportunity for the homeowners to drain some of that water back off their property. Normally the houses drain away so the elevations have changed so there are some lower spots that you can move to the swale without disturbing trees. Acting Chairman Shallcross stated that any water running south of the swale will never run into their yards again. Vice Mayor Kurtz believes that the water currently plains across the property going northeast, and it will hit the swale and stop. It won't go on the property anymore. It may be a several step process to eventually eliminate the problem; but they have to start with the swale on the conservation easement and see what happens as the result of the installation of that.

Vice Mayor Kurtz asked the City Engineer if the governing point of the easement is the creek to the east. That is the beginning point of the drainage elevation right? City Engineer Elewski agreed. Vice Mayor Kurtz stated then you have to move back from there. All he is going to suggest to the City Engineer is to go as low as he can because you are going to be tying in until Parcel 3 will be all underground anyway so you might as well make it as deep as possible.

Mr. Sogor asked the Law Director once this is passed and the lot split is a done deal, what would be involved if the property then sold and then the new owner/developer comes before the Commission and wants to get rid of the restrictions and easements? Law Director O'Brien stated that once the conservation easement is recorded and the deed restrictions are recorded, they would need the City's consent. There is a buildable lot

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there. The only thing that would concern the Law Director is that if the City puts too much restriction on it that you couldn't use the property in a reasonable fashion. He is not afraid of someone coming back and saying that they have an unbuildable lot. Mayor Ramos stated that the conservation easement is going to be given in favor the City. Consequently, the City will be the one that enforces that.

Acting Chairman Shallcross asked Ms. Kukawka if she agreed to all the terms that the Law Director had read previously. She does agree.

Mayor Ramos asked if there was a letter of intent. Ms. Kukawka did have one in her possession. Mayor Ramos stated that the letter of intent with the prospective purchaser for proposed Sublot 4 is to confirm that he or she was aware of the restrictions that have been placed on the lot. He wanted the prospective purchaser to be aware of what they were buying into. Mayor Ramos stated that he shares part of Mr. Sogor's concern that someone will come in and say that they can't do what they want with Sublot 4. Ms. Kukawka stated that she showed the prospective buyer the letter from the City. She has shown him the drawings from the City Engineer's office. His letter states that he is aware of the restrictions to be placed on Sublot 4.

Mayor Ramos stated that he would like to ask that when the City starts doing the swale, that the people along the cul-de-sacs there are given notice so that the City can work with them as far as dealing with that issue.

A motion was made by Tom Narduzzi, seconded by Vice Mayor Kurtz, to approve the lot split and consolidation subject to the applicant deeding and donating to the City approximately 300' of the current driveway that intersects at Brecksville Road and presently serves the two existing residential properties in that area;

Subject to except for the encroachment of the driveway ingress and egress, that the applicant deed and grant to the benefit of the City a 100' conservation easement along the entire northern boundary line and a 35' conservation easement along the southern property line and proposed Sublot 4;

That a deed restriction subject to in a form acceptable to the City Law Director be prepared and filed for proposed Sublot 4 encompassing and including the following restrictions: (1) only one residential dwelling may be constructed on proposed Sublot 4; and (2) that any dwelling shall be constructed no less than 250' from the western property line; and (3) that the driveway servicing proposed Sublot 4 shall be designed and constructed in a design acceptable to the City Engineer and City Planner so as to move away from the northern boundary of the property line as practically feasible;

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Subject to an easement being granted for the construction and maintenance of a swale along the northern property line;

Subject to the vacation of Eugene Drive;

Subject to the City's maintenance, assuming it's in a storm sewer easement, if not easements placed upon the two driveways to allow snowplowing for those particular driveways; and

Subject to variances, if any, going before the Board of Zoning Appeals for any of the proposed lots.

**ROLL CALL: Yeas: Narduzzi, Kurtz, Shallcross, Ramos
 Nays: None
 MOTION CARRIED**

Bartlett Cove, PPNs 563-01-043, 563-01-044, 563-01-045 & 563-01-046 – Mr. Gene Troiano of Perry Homes was in attendance. Mr. Troiano stated that they have prepared a preliminary sketch for the purpose of making application for a lot split and consolidation for four lots that are located on Bartlett Cove. The four lots are currently platted, and they are subject to the court decree that created the shape of those particular lots. What they are asking for is to now re-shape those four lots into three lots. They are losing one lot and would be forfeiting some of the variances that they had acquired previously. Mr. Troiano would like to request preliminary approval of that, and then go to the Zoning Board of Appeals to establish what the net effect is going to be on the construction of the lots. Vice Mayor Kurtz asked if that section has been approved. Mr. Troiano stated that it is part of Phase 2.

Mr. Narduzzi asked Mr. Troiano what was the purpose of going to three lots. He stated that it was a market thing. They have a number of buyers who would be interested in a slightly wider lot. The topography on those lots are very severe. It is difficult to work inside of the 80' existing building lot.

Vice Mayor Kurtz would like either the Law Director or the City Engineer to put together an assessment of the first and second phases of the existing situation. Has everything been conformed to? Has everything been installed the way it was suppose to? The Vice Mayor would like to have that information prior to the next meeting. The Vice Mayor would like to understand where the City is at with respect to the subdivision, the Development Agreement, etc. The Vice Mayor asked Mr. Troiano about the Homeowners' Association. Mr. Troiano stated that the Homeowners' Association is

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active. They have dues. The Vice Mayor asked who handled the association. Mr. Troiano stated that he was doing it. The Board consists of his dad and himself. Vice Mayor Kurtz asked how the developer could be in charge of the Homeowners' Association. Mr. Troiano stated that they can't find anybody who wants to serve. The people who have initially volunteered to serve have withdrawn. It operates under the guidelines that exist. It operates completely appropriately under their care. Mr. Troiano stated that the developer operates the Homeowners' Association at this point. Law Director O'Brien stated that if it is drafted like most Homeowners' Agreement, it would give the developer a super voting power. Vice Mayor Kurtz wants the Law Director to put that together for him. Law Director O'Brien stated that Gene and his dad own the voting shares in the Homeowners' Association; until they sell most of the sublots, 75% typically. It is not a separate Homeowners' Association per phase, it is the whole subdivision. Mr. Troiano stated that the homeowners do not want to participate in managing the Homeowners' Association. That is why Mr. Troiano is doing it.

Vice Mayor Kurtz asked Mr. Troiano if he would abdicate the responsibility of taking care of the Homeowners' Association if someone would step forward to volunteer. Mr. Troiano would. Whatever needs to be done is being done by them. They are handling it. Mr. Troiano stated that they are paying the bills, cutting the grass, and maintaining the retention basin. From a business standpoint it is all being handled. If the homeowners are concerned whether their next door neighbor painted his front door purple instead of green, that type of care or concern is not being addressed. It has not happened. The level of interest isn't there to want to do anything more.

City Planner Markley addressed the Vice Mayor stating that until you get a critical mass of people forming a community; you usually don't get a Homeowners' Association that is very active. Usually you get board members appearing when there is a problem. You start getting these people who want to be on the board to influence change in what is going on in the community.

Vice Mayor Kurtz asked the Law Director to put together something. Law Director O'Brien stated that he would put something together as to the legal issues. Vice Mayor Kurtz stated that from an Engineer's standpoint, he would also like the same thing. City Engineer Elewski stated that they have not had any problem. They have conformed with what they need to.

Law Director O'Brien asked about the retention area that was before the Commission approximately a year ago. Mr. Troiano stated that it was in Phase 1.

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Mr. Narduzzi asked how far Phase 1 is complete. Mr. Troiano believes it is about 60% complete. Mr. Narduzzi asked if Mr. Troiano ever came up with a solution for finishing the sidewalks. Mr. Troiano stated that the sidewalks are being done with each house. As the house is being done, the sidewalks are put in. Mr. Narduzzi stated that it has been going on for a long period of time.

Law Director O'Brien stated that he would like this matter tabled until next month. He stated that he will get these issues together for the next meeting. In the meantime, Mr. Troiano can go to the BZA and seek any variances and come before this Commission next month.

Acting Chairman Shallcross stated that this matter will be tabled until next month.

Acting Chairman Shallcross stated that the last item of business under Other Business, which is the senior housing, there will be no action taken on this evening as another workshop has been scheduled for Tuesday, October 2, 2007.

There being no further comments or business, a motion was made by Acting Chairman Shallcross, and approved by the Commission, to adjourn the meeting at 7:50p.m.

Jack Shallcross, Acting Chairman

Debi Beal, Planning Commission Clerk

Minutes unapproved at Time Released 9/09/07