

CITY OF HUDSON
PLANNING COMMISSION
REGULAR MEETING OF DECEMBER 12, 2011
7:30 P.M., TOWN HALL

MINUTES

CALL TO ORDER

The Chair, Mrs. Barone, called to order the Regular Meeting of the Planning Commission of the City of Hudson at 7:30 p.m. in Town Hall, 27 East Main Street, Hudson, Ohio.

ROLL CALL

Present: Mr. Cox, Mr. Dostal, Mr. Kagler, Mr. Mulligan, Mr. O'Keefe, Mrs. Barone
Absent: Mr. Drew

Officials Present: Mark Richardson, City Planner, Aimee W. Lane, Assistant City Solicitor

Minutes were taken by Ms. La Lomia, Planning Commission clerk.

OATH OF TRUTHFULNESS

Mrs. Barone, the Chair, placed everyone under oath who would be giving any testimony during the meeting.

CORRESPONDENCE

An email from Julie Lindner, 7548 Valerie Lane, Hudson, was submitted regarding Woodland Estates and is attached to the record copy of the minutes.

CASE NO. 2011-37, WOODLAND ESTATES PLAT AMENDMENT

Mr. Richardson stated this matter was postponed from the November meeting at the request of the applicant. This is a replat of the subdivision to create additional buildable parcels. He reviewed the staff report and said a homeowner's association must be formed. Several lots were increased in size, four lots were deepened, and one lot was removed.

Barry Tancer, Brownstone Construction, 200 Victoria Road, Austintown, Ohio, the applicant, said he was representing Simm Westbury LLC who will be the formal owner of twelve (12) lots, a subsidiary of Ohio Valley Energy, and this has been a long and ongoing process. He said they currently had taken on lots 9 to 13 in a purchase agreement between the courts and Ohio Valley Energy. He explained the changes to relocate the tank battery were to make lots 9, 11, 12, and 13 buildable and add some depth to lots 14 and 15. There were very restrictive easements on lots 14 and 15 and they added land to the back of those lots. He said they wanted to maintain the house size within the deed restrictions.

Mr. Mulligan asked whether the garage was detached at 7481 Valerie Lane and since a garage was not habitable was that why it was not part of this radius. Mr. Richardson said the garage appeared to be detached.

Mr. Mulligan asked whether there was any other mechanism to get the homeowners association formed as required. Mr. Richardson thought the City could find other means to compel the formation of the homeowners association. Mrs. Lane said it appeared the homeowners association had been created with the Secretary of State on December 5.

Mr. Tancer said the 30 foot utility easement on both sides of lot 15 had been a problem. He said they had to construct a 2400 square foot house on this lot which was virtually impossible to do with a side or rear garage.

Mr. Richardson explained there was a three (3) page handout in which the last page showed the original recorded plat with all the easements. He said the top page showed a circle with a 200 foot setback from the tank battery and there was a 100 foot setback from the existing wellhead.

Mr. O'Keefe inquired about the changes in Ohio law regarding oil and gas drilling. Mrs. Lane explained in 2004 state legislature passed an act that essentially stripped a municipality of the authority to regulate the location of new oil and gas wells and related equipment. She said the only area the City can enforce is the setback of new dwellings with respect to an existing well, tank batteries and related equipment.

Mr. Kagler stated for disclosure purposes, that his parents home was at 2365 Woodacre Drive, about three blocks away, but it was not in any of the setback areas. He was concerned about the homeowners association rules and regulations with regard to forming the association and turning it over to the residents when 75% or more of the lots were sold. He said the subdivider was not ready to turn it over and wanted to make sure it did get turned over.

Mr. Tancer said they were not stepping into the developer role; they were a building company.

Mr. Kagler thought the deed restrictions required a homeowners association to be established and recorded before any lot was sold and the first three people were to be the officers of the homeowners association. Mrs. Lane read from the Declaration of Restrictions and said the developer shall turn over the association to the lot owners at any time it shall elect. She said those lots were still in the trust name and were being managed by a court receiver.

Mr. Kagler reviewed conditions 2 and 4 of the proposed decision.

Mr. Kagler asked about the requirements of some of the trees. Mr. Richardson said there was no net loss of screening and the applicant had agreed to replace trees 1 for 1.

Mr. Kagler did not understand changes to lots 11 - 15. He said on lot 14 if it was replatted the lot would get bigger but the buildable area of the lot would not change. Mr.

Tancer said it increased in depth which could be built on. Mr. Kagler said the lot lines moved but the utility easements did not. Mr. Tancer said between lots 14 and 15 the easement to the back was not a utility easement. Mr. Kagler said the easement on the north and on lots 14 and 15 were for the purposes of a storm water basin there. He said it was not unusual for someone to put in a fence or shed and get permission from the City to build there. Mr. Tancer said he had this discussion with the City Engineer and the utility could operate within that easement.

Mr. Kagler said these lots required the utility easement be moved north 20 feet subject to approval by the City Engineer. He said the aerial picture showed the pond was not there. Mr. Richardson said that decision needed to be satisfactory with the City Engineer.

Mr. Kagler said a gas well was a temporary use of property since there would become a time when the tanks were removed and the setbacks would be going away. He asked why there was a Block A in this subdivision and who was going to be responsible for it when the gas well was plugged in 20 years. Mr. Tancer replied Block A was on a recorded easement for Ohio Valley Energy to get to the wellhead and Block A was part of the open space with a recorded easement for Ohio Valley Energy to operate the well and equipment.

Mr. Kagler commented he would be more comfortable if the lines were dashed so it was clear the homeowners would eventually own it.

Mr. Kagler said regarding the tank battery and setbacks on it and the waiver from the neighbor on Woodacre he agreed with Mrs. Lindner about the developer being required to provide for this relocated tank battery on their property and to not take advantage of neighboring property owners.

Mr. Kagler said the Commission was not in a position to dictate the tank battery be moved but if that tank battery was not moved it would render at least four of the lots unbuildable. He said there was a plat to be approved that conforms to the Code and he was concerned the Commission risked approving a subdivision with several lots unbuildable. He said the Board of Zoning and Building Appeals ("BZBA") would decide whether the setbacks could be reduced in those locations.

Mrs. Lane explained the original developer knew the issues of installing a gas well and the resulting use of all of the lots. She said it was a business risk made in putting together this subdivision. She said the Commission was trying to clear up something created a long time ago and there was no tank battery or well there when this subdivision was created.

Mr. Kagler was concerned the Commission would set a precedent approving a subdivision where the lots do not meet the zoning requirements. Mrs. Lane appreciated his concern and said if this tank battery is not moved the approval of this replat does not create a precedent.

Mr. Dostal said it was an interesting history of this subdivision with the issues of

setbacks and asked whether Ohio Valley Energy represented the developing interest of the natural gas exploration firm. Mr. Tancer replied that was correct.

Mr. Dostal asked whether it was their intent to be the builder. Mr. Tancer replied he was a custom home builder, a subsidiary of Ohio Valley Energy, and was there to construct and sell the homes on that property. He said in today's economic environment this was an opportunity to participate to try to cure the problems of the development but also an opportunity to make money. He said he was not involved in the oil and gas side since his primary business was building custom homes.

Mr. Dostal asked about the issues raised by Julie Lindner. Mr. Richardson responded the staff report did not directly address Mrs. Lindner's email but does address the same point, the setback from the tank battery encroaching on lots on Valerie and Woodacre. He explained if some of the people on Valerie Lane and Woodacre Drive (four lots) wanted to add onto the back of their homes it would be a challenge. Mr. Tancer said the Hudson requirement was a new structure could not be built within 200 feet of the tank battery. He said there have been instances where they can add onto existing homes.

Mrs. Barone asked whether all lawsuits had been settled. Mrs. Lane replied yes, as far as she knew there was just this receivership.

Mrs. Barone asked whether Ohio Valley Energy put in the gas well in the first place. Mr. Tancer replied, yes.

Mrs. Barone commented if that area was going to be an easement it should be changed on the plat to show as an easement.

Mrs. Barone opened the public hearing.

Louise Mazur, attorney, 388 South Main Street, Suite 500, Akron, Ohio, was present on behalf of Jeff Heintz, the court-appointed receiver. She said there were unresolved lots and open space issues. She said it has been ongoing for quite awhile. She said the homeowner's association had to be formed and there has been communication with the homeowners to secure a good location to have a first meeting. With regard to the easement, the legal counsel for Ohio Valley Energy was out of town to discuss the easement terms. The receiver was making sure the easement language would provide protection for the homeowners association and individual property owners within Woodland Estates. She explained how this entire scenario came about after many hours of litigation, a court case pending for five years this February, and a resolution reached between Huntington National Bank and Ohio Valley Energy as to whether or not to move lots 9 - 13 .

Tim Graham, 7551 Woodland Avenue, said once a homeowner's association was established Ohio Valley Energy would have twelve (12) votes and was concerned what they would do. He stated that under the Lease Ohio Valley Energy can drill additional wells. He said Ohio Valley Energy was sued by Bainbridge Township but they were not found guilty of contaminating wells. He asked the City to protect the residents of

Woodland Estates from Ohio Valley Energy.

Monica RodriguezLynn, 7557 Woodland Avenue, said they have been meeting as a neighborhood and want to have the neighborhood fenced. She said they were told the tank battery was going to be moved but there was a lot of legal work behind the scenes. She said they wanted to work with Ohio Valley Energy to have the development completed but did not want to get trampled over again. She said they did not want any more wells drilled, no fracking or other ways to find more gas from this well . She was concerned about the residents of lots 14 and 15 and thought expanding those lots would drive down their property values even more. She was concerned lots 9, 11, 12, 13, 14 and 15 were getting bigger and requested that extra open space be added to the other lots in the subdivision.

John Kolar, 7589 Woodland Avenue, said it was not possible to develop lots 9, 10, 11, 12 and 13 lots because of the tank battery. He said if the tank battery and wellhead were gone those lots would be buildable. He said a homeowners association had been formed but Ohio Valley Energy had 12 votes. He said they could change the subdivision restrictions and the prime developer of this subdivision, Smith Family Trust, had a right to review all house plans. He asked whether he would still have the right to review the houses with the current owners. He asked how many wells they intended to put on the property. He asked whether the property owners of the adjoining lots knew they would need a variance to do any work on their homes when the tank battery was moved.

Scott Lindner, 7543 Valerie Lane, said this development has been an ongoing mess. In his opinion the developer was going to challenge the 200 foot setback. He said the BZBA did not approve variances from those setbacks. He was opposed to moving the tank battery and said there was a lot of opposition to the plan by the neighbors. He said this was supposed to be open space conservation and undisturbed land and the road to access the tank battery was going to go through the retention basin area which was wet. He said the underlying 100 foot setback to the well did not go away when the tank battery was moved, lot 10 was within that. He said lots 9, 12 and 13 would be buildable without variances. His opposition to moving this tank battery was based on neighbors who cannot build on the back of their house and people cannot sell their homes with this restriction. He said Ohio Valley Energy was a subsidiary that owned the well and they own the lots so it helped them if it was unbuildable.

Mrs. Barone closed the public hearing.

Mrs. Barone stated the Commission had no jurisdiction about putting in more wells explaining that authority was under the state.

Mrs. Barone said there were several questions about the homeowners association and the Commission had no control over that language.

Mrs. Barone asked whether with the replat lots 14 and 15 could fit a house under the restrictions. Mr. Tancer replied currently it was impossible because of the deed restrictions. Mr. Kagler said all the lots on the west side were 75 feet wide, however,

the side setbacks were 10 feet. He said on most lots there was 55 feet wide area to build, on lots 14 and 15 it would be a very narrow area to build a house because of the utility lines. He did not think that was a concern if the easement was moved then the buildable area would permit a house to be built.

Mrs. Barone asked about making other lots larger. Mr. Richardson said that would entail a complete replat. Mr. Tancer said a replat would require everybody in the development to agree to go one way and they may want that but some of the neighbors may not want to.

Mr. Tancer said they had no problem with space being added on the other property owners lots with the rest of the homeowners giving land to them. He offered this plan to get to the point to just start making the changes because of unpaid bills from the previous developer. He said if the existing homeowners would want to add property onto their lots he was not interested in paying for all of the engineering but could maybesave them money if the City would approve reducing the open space to fifty percent. Mr. Richardson said they would have to come back to the Commission and the open space was a big issue. Mrs. Barone stated it would have to be a group effort. Mr. Mulligan stated if the applicant's engineer could do the work for these people it would save them a lot of money but he did not believe there was a lot of land to be picked up.

Mrs. Barone said if the well was capped lots 9 and 11 could be built on. Mr. Richardson agreed they could potentially be built on but that assumed everything was okay with the wellhead and tank battery only having a 25 foot setback remaining.

Mrs. Barone asked about the Phase 1 environmental study requirement. Mr. Richardson did not know how the state regulated the removal of equipment. Mr. Tancer said there were very stringent regulations from both the state and Ohio Department of Natural Resources with stipulations and specifications prior to and after the tank battery was moved.

Mrs. Barone asked whether the adjacent homeowners that were going to be impacted understood the variance requirements. Mr. Richardson did not know if they did or not. He said they were notified of this meeting.

Mrs. Barone asked about the road going through the retention basin. Mr. Richardson said the City Engineer reviewed the plan and was satisfied with the location of the road. Mr. Tancer explained the road had been moved east as requested by the City Engineer to get to the edge of the marshland.

Mr. Cox asked whether when the well was made did some of the homeowners have to be part of it to reach the amount of acreage needed since almost every house on the adjoining street was part of that well. He said the City did not have any authority as to where a well owner could put his tank battery since it was up to the state. Mr. Tancer said the other homeowners that were close to that circle are part of the well and have all been approached, only one can be released, the other owners have been contacted.

Mrs. Barone asked whether the lease would go with the property. Mr. Tancer said that

was part of the modifications to maintain your mineral rights. He said it was a big issue with the courts.

Mrs. Barone asked whether they planned additional wells. Mr. Tancer replied no, they were trying to maintain the deed restrictions as they are recorded for lots 12 and 13 and because of the process with the bank, proving those lots were buildable. He said lot 12 has a 2400 square foot restriction where the wellhead was and for lot 13 the buildable area was required to be angled to the street, adding 15 feet on the width to get the driveway around the side of the house.

Mrs. Barone said there was concern Ohio Valley Energy had more votes than the property owners.

Mr. Dostal said from a sales point based on living space gaining more land was more trouble than what it was worth. He said the streets abutting this property probably all signed onto the well and will receive payments of royalties.

Mr. Mulligan was concerned to protect the three homeowners who may or may not know their property rights were being affected by this and protecting the residents who have built in Woodland Estates. Ohio Valley Energy can build houses and sell the lots to individual homeowners who can then keep future wells from coming in. He said the Commission's goal was to approve a plat and could go with a compromise moving the tank battery but not moving it as far, which would make lot 9 unbuildable, but lots 11, 12, 13, 14 and 15 would become buildable and the cost would be to Ohio Valley Energy

Mr. Mulligan said it was a different issue with being a part of well royalties. Mr. Cox said public notice was made and they could protect themselves but have not come here.

Mr. O'Keefe did not like putting on a condition which was a hindrance on these other homeowners. He said he would allow as many lots built as possible but not affect some homeowners who may not be able to add onto their houses. He said he would probably have to vote this down.

Mr. Richardson referred to the drawing with the circles. Mr. Kagler said now under the current tank battery location, lots 9, 10, 11, 12, and 13 were unbuildable. He asked whether there was another location proposed that the Commission had not seen. Mr. Tancer said there have been numerous locations since 2002.

Mrs. Lane asked whether anything had been submitted with the state or with Ohio Department of Natural Resources for a permit. Mr. Tancer replied their application had been approved and the new tank battery location was signed off by the chief executive director of the Ohio Department of Natural Resources.

Mr. Kagler said the location was adversely impacting Mr. Evans, 7543 Woodland Avenue. He said there may be a number of different options.

Mr. Kagler suggested Lots 9, 11, 12, and 13 be deemed buildable only at such time as

either the well is capped or the tank battery is relocated outside the buildable area on lots in this subdivision and in adjacent subdivisions.

Mr. Tancer explained his legal counsel was out of town and said he had a copy of the easement that was approved.

Mrs. Barone asked whether the lines in the back yard were at the setback. Mr. Richardson replied, yes.

Mr. Dostal believed those people who did not show up were ok with the issues.

Mrs. Barone did not want to cause a hardship on a future homeowner. She said the developer was well aware these lots would not be buildable and felt sorry for Ohio Valley Energy.

Mr. Cox questioned whether this question of lot 9 being buildable was within the Commission's authority. Mr. Mulligan said if they wanted to put a well on lot 15 the Commission could not stop them but a new structure was under the City's control. Mr. Cox said that lot could not be built on until the well was capped.

Mr. Kagler said the lots were not buildable under today's codes and he did not think the Commission should approve new unbuildable lots.

Mr. Kagler moved to approve the application for the replat of an approved final plat in Case No. 2011-37 for Woodland Estates Subdivision Replat of Lot No's. 10-15, Parcels A and B, and Block A, according to the plat dated as received December 2, 2011 with the following conditions.

1. The Homeowner's Association for this subdivision must be formed and turned over to the lot owners as required by Ohio law.
2. All Open Space parcels (Private Open Space Parcel A and Public Open Space Parcel B) and Block A in the subdivision currently held in fee simple title by the Smith Family Trust shall be deeded in fee simple to a properly created nonprofit corporation homeowners' association before or at the same time that the revised plat is recorded with Summit County. -
3. The comments on the red-marked plans as noted in City Engineer Thom Sheridan's letter of November 22, 2011 must be addressed.
4. The east - west utility easement line along the north side of lots 14 and 15 shall be relocated approximately twenty (20) feet to the north, subject to approval by the City Engineer.
5. Block A shall be changed from a parcel to an easement with all proper documentation pertaining thereto of an area and in a location to be determined, entirely within Private Open Space Parcel A, with the area of Private Open Space Parcel A to be increased accordingly, and with such easement to be vacated at such time that the well is plugged and the tank battery is vacated in accordance with Ohio law.
6. Presuming lot 10 as shown on the original plat is eliminated as part of this replat, lots 9, 11, 12 and 13 shall be deemed buildable only at such time that either the gas well

is capped and plugged and the tank battery is removed, or the tank battery setback is relocated so that it is outside the buildable areas for structures suitable for occupancy on all lots in this and adjacent subdivisions, with buildable areas identified as areas on lots outside all minimum required yards and setbacks.

7. A bond in the amount of 110% of the cost to install 20 evergreen trees must be submitted.
8. The replat may not be recorded until the above comments have been addressed. The landscaping must be installed within six months of the relocation of the tank battery.

Motion failed due to a lack of a second.

Mr. Dostal asked whether plugging the well was an option for Ohio Valley Energy at this time. Mr. Tancer replied, no.

Mrs. Barone asked whether they could approve a different location.

Mr. Cox moved to adopt the same motion with all the same conditions except for the last provision. Mr. Kagler seconded the motion.

Mr. Dostal suggested changing the setback. Mr. Kagler said the applicant had to go to the BZBA and the BZBA has the authority for the future construction on lots 9, 11, 12, and 14 but the BZBA had no authority for Mr. Evans or any of the adjacent property owners. He said the intent of condition 8 was to provide some additional protection for Mr. Evans and the additional property owners. Mr. Mulligan thought it was a compromise to protect the neighbors to an extent. Mr. Cox said there were 12 acres, and 40 acres were needed to participate in this gas well so everybody in this neighborhood was a participant and they were taking part of the benefit so they were not here to protest. Mr. Mulligan said there was only a letter of waiver from Mr. Edmonds, 2425 Woodacre Drive, and not a letter from the other people. Mr. O'Keefe said it was a matter of protecting future owners when they sell their property or they have an encumbrance to development.

Mr. Tancer said there was only one house within that 200 feet and he thought it might be possible they could in fact get a variance. Mr. Mulligan said unfortunately there was cost in the variance process. He said Ohio Valley Energy and its successors, and alternately the homeowners association, would probably not be willing to hold these neighbors harmless to go through this process. Mr. Tancer agreed.

Mrs. Barone said in condition 1, the homeowners association had been formed but there was not a problem leaving it in. She suggested revising condition 6, to add "per the City Engineer approval".

Mr. Kagler said without condition 8 the ability to enforce but provide no protection to adjacent property owners. He said a radius can move around the people and it can be reduced but he wanted to put some limit to protect the property owners.

Roll Call:

Aye: Mr. Cox, Mr. Dostal
Nay: Mr. Mulligan, Mr. O'Keefe, Mr. Kagler, Mrs. Barone
Motion did not pass.

Mr. Graham stated there was no existing homeowners association formed.

Mr. Kagler moved to make the same motion as the first motion with a change to add to condition 6: "per the City Engineer approval". Mr. Mulligan seconded the motion.

Roll Call:
Aye: Mr. Cox, Mr. Kagler, Mr. Dostal, Mrs. Barone
Nay: Mr. Mulligan, Mr. O'Keefe
Motion passed.

APPROVAL OF MINUTES

Mr. Cox moved to approve the minutes of the November 14, 2011 Regular Meeting, assubmitted. Mr. Dostal seconded the motion.

Roll Call:
Aye: Mr. Cox, Mr. Dostal, Mr. Kagler, Mr. Mulligan, Mr. O'Keefe,
Mrs. Barone
Nay: None
Motion carried.

Mr. Kagler stated this was the last meeting of his term, he had reapplied, but had not yet heard if he was reappointed. He appreciated his time with the Commission and thanked them.

The Chair, Mrs. Barone, adjourned the meeting at 10:00 p.m.

Jennifer Barone, Chair

Nora La Lomia, PC Clerk