

CITY OF HUDSON
PLANNING COMMISSION
REGULAR MEETING OF JANUARY 9, 2012
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. Drew, Mr. Dostal (arrived late), Mr. Kagler, Mr. Mulligan, Mr. O'Keefe, Mrs. Barone
Absent: None

Officials Present: Thomas E. King, Director, Mark Richardson, City Planner, Aimee W. Lane, Assistant City Solicitor, David A. Basil, Council Liaison

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

ELECTION OF OFFICERS

Mr. Mulligan moved to nominate Jennifer Barone as Chair for 2012. Mr. Drew seconded the nomination. There being no other nominations, Mrs. Barone closed the nominations.

Roll Call:

Aye: Mr. Cox, Mr. Drew, Mr. Kagler, Mr. Mulligan, Mr. O'Keefe

Nay: None

Abstain: Mrs. Barone

Motion carried.

Mr. Cox moved to nominate Joseph Mulligan as Vice Chair for 2012. Mr. O'Keefe seconded the nomination. There being no other nominations, Mrs. Barone closed the nominations.

Roll Call

Aye: Mr. Cox, Mr. Drew, Mr. Kagler, Mr. O'Keefe, Mrs. Barone

Nay: None

Abstain: Mr. Mulligan

Motion carried.

OATH OF TRUTHFULNESS

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

CASE NO. 2011-37, RECONSIDERATION OF WOODLAND ESTATES PLAT AMENDMENT

Mr. King reviewed the staff report in detail. He said the replat had been approved by the Commission and explained in order to discuss reconsideration of that decision there needed to be a motion to rescind the prior decision.

Mrs. Lane explained the Commission needed to decide whether or not to rescind the previous decision. She said the public hearing was held last month and this would just be deliberation of the decision.

Mr. Kagler moved to rescind the decision from the December 12, 2011 meeting. Mr. Mulligan seconded the motion.

Mr. Cox said this was an unusual procedure. He read certain sections from the Judge's action and said with option 1 the tank battery could not be relocated. He said the Commission had no authority as to where the tank battery could be located and by State legislation they were allowed 100 feet. He reviewed the drawing and did not think there was any place on the map where the battery could go. He thought the battery should be moved, since building these lots had been stalled, so he did not think the decision should be rescinded. He commented there was a discrepancy in the decision and in the minutes. He thought the applicant had tried to comply with the rules and said it was a mistake to rescind the previous decision.

Mr. Kagler said as the maker of the motion he acknowledged the condition was confusing and he wanted to clarify that. He said it might be necessary to have the setback from the tank battery relocated and maybe reduced and the entity to reduce the setback was the Board of Zoning and Building Appeals ("BZBA"). He thought the minutes and the decision did not match due to his email trying to clarify the decision. He thought there were a number of things that could be done. He reviewed the map handed out by Mr. Richardson and said the State only required a 100 foot setback from a tank battery but the City and Former Township had a larger setback. He said his sole purpose in trying to put language in condition 6 was not only to meet the State regulation but to also meet the intent of the City ordinance requirement. He said 3 – 6 homes could be rendered nonconforming and he did not think that was fair.

Mr. Kagler asked whether the motion to rescind needed a two-thirds vote. Mrs. Lane said a majority vote was sufficient.

Mr. Kagler said if the decision was to be passed he would add the following language to condition 6, "and/or reduced" on the third line. He said it would not dictate a location to the BZBA to approve anything but would give them a roadmap in order to make as many lots as possible buildable in this subdivision. He said they were looking out for the residents outside the development also with attention to the plan and converting a

lot back into an easement. He said on lot 10 the Ohio Department of Natural Resources (“ODNR”) has a setback when a well is plugged even after the well is plugged. He said there was not a survey prepared document so he was unsure whether or not they were in a position to act without a revised plan in place. Mr. Kagler said he was prepared to make the same motion as last month and add those new words.

Mrs. Barone asked for a vote on the motion to rescind the decision.

Roll Call:

Aye: Mr. Drew, Mr. Kagler, Mr. Mulligan, Mr. O’Keefe, Mrs. Barone

Nay: Mr. Cox

Motion carried.

Mr. Kagler moved to make the same motion as in December and to add the words “and/or reduced” after the word “relocate” on the third line in condition 6 based on the plans submitted before the last meeting. Mr. Mulligan seconded the motion.

Mrs. Barone asked the applicant whether he had any problem with that motion, and he did not.

Mr. Drew said he was on the BZBA when the well went in and the decision of the BZBA was that the applicant made a choice. He said the well was not permanent since at some point in time it would be capped. He said there was a variance request to go from 200 feet to 25 feet and the Board denied the variance, it went to court, and that decision was affirmed. He said it was not fair to burden the existing homeowners. He asked what was the effect if the existing plat was left in place.

Mr. King replied the tank battery would not be moved and therefore some existing homes on Valerie Lane are impacted by the current location of the tank battery. He said the tank battery would stay in view of some of the new homes and the proposed location in the open space could be shielded and screened more.

Mr. Drew asked whether the ODNR controlled where the well was drilled and where it was located. Mr. King said yes. Mr. Drew asked whether they controlled both the location and the tank battery. Mr. King replied they had permit authority over each.

Mr. Drew asked the relationship of the ODNR and the plat. He understood Hudson originally had a rule for a 200 foot setback for a tank battery and then 200 feet to a house. Mr. King said the applicant has applied for a change to Block A, the plat is affected by Block A, an easement, and the open space has restrictions on structures and roads.

Mr. Dostal arrived at the meeting at this time (8:15 p.m.).

Mr. Kagler clarified when the original subdivision was platted, there was no well or tank battery. He said to approve a replat was to approve lots in a development with a tank battery in its current location. He said it would be to approve unbuildable lots that

cannot comply to current rules. He said a new subdivision would not be approved with lots unbuildable at the time of approval.

Mr. Drew questioned who owned the lots and who was filing this application. Mrs. Lane responded the Smith Family Trust went into bankruptcy, the property foreclosed, the Court appointed a Receiver and the Receiver owned the open space property. She said Ohio Valley Energy ("OVE") owned seven (7) lots which was part of the agreement worked out between the Receiver and OVE. She said the concern was that at some point this open space gets turned over to the homeowners association. She said the open space property was still in the name of the Smith Family Trust and would be transferred to the homeowners association and they would maintain it.

Mr. Drew said the homeowners association was concerned with the control they might have over building or changes to this plan. He asked what authority did they have once it was formed. Mrs. Lane explained there was a provision in the Covenants and Restrictions of the subdivision that the Smith Family Trust had to approve the home design. She believed that obligation would transfer to the homeowners association and OVE to come to a consensus.

Mr. Drew asked whether any motion made on this application was only for the existing homeowners or would it include the Valerie Lane and Woodacre Drive residents. He said the developer made an economic decision and it was not fair to impact the neighbors adjacent to this new development.

Mrs. Barone said the Commission had rescinded the decision and Mr. Kagler made the same motion with the addition of "and/or reduced" in condition 6.

Mr. Kagler said the revision in the condition would preserve the right of people who had adjacent homes and their right to build an addition to the end of their property lines without being impacted. He said in the proposed drawing the solution was for the applicant to go to the BZBA and ask for that setback to be reduced to 175 feet so the tank could be put in that location. He said the rights of the existing property owners were more important than the rights of the developer and the property owners with homes in Woodland Estates were the same as Valerie Lane or Woodacre Drive. He said the situation begged some sort of compromise and the BZBA had that authority.

There was a short discussion regarding the circles on the drawing.

Mr. Mulligan supported the changed motion.

Mr. O'Keefe said he voted against this last time because of the Valerie Lane and Woodacre Drive properties. He thought this change helped not only the properties currently affected but had the same affect to properties on the north. He asked whether adding "and/or reduce" was enough or maybe a number should be added such as "to no more than 175 feet". He said only one property owner was affected and the City did not have to approve the plat but believed a compromise should be worked out. He

supported the revised motion. Mr. Richardson did not have a problem with having a specific number but was reluctant to use this number.

Mr. Drew asked whether the Commission should refer the matter to the BZBA and then come back and reconsider the plat. Mrs. Barone said the decision could be conditioned on the BZBA approval. Mrs. Lane explained if the BZBA did not grant a variance, they would have to come back to the Commission anyway.

Louise Mazur, attorney, 388 South Main Street, Suite 500, Akron, Ohio, was present on behalf of the Receiver. She said the Receiver was a co-applicant with OVE due to a purchase agreement regarding the lots. She said the Court approved the sales of the lots with the understanding that the Receiver would cooperate. She had believed they would be able to move the tank without adverse impact to any of the other properties so they also had concern similar to what Mr. Drew voiced. She asked when a condition of modifying the decision was that a variance was going to be applied for, would OVE cover the cost and expense so no other property owner would be affected by the tank battery move.

Mrs. Barone believed the intent would be that OVE would have to apply. Mr. Richardson said traditionally anybody can apply but the owner does need to sign the application.

Mr. Kagler said condition 6 states the lots were not buildable and in order to make them buildable there were certain things that had to be done. He said by revising the plat new lot lines are created. He said lots in a new subdivision within a tank battery setback relocation would not be approved. He said these lots exist now and when they were approved there was no tank battery. Mr. King said lots can be created that are not buildable, there is no requirement that a lot be able to be used for a house. Mr. Kagler said it depended on what was on the ground at the time of approval. He said the tank battery was put in after the lots had been created.

Mr. Mulligan said going forward OVE was going to own those lots and he asked about the legality of recreating the lots. Mr. King replied a subdivision plan is independent of its use of the lots. Mr. Mulligan thought there were conflicting theories. He asked with this wording could the applicant ask for a variance only for the benefit of lot 8 without asking for a house on Valerie or Woodacre. Mrs. Lane said the condition could be reworded. She said what would have to happen would be for there to be a variance outside of OVE's control and the impacted lots. She said OVE does not have any control over those lots.

Mr. Mulligan suggested language for condition 6, "as to all neighboring residential lots (unless and until to the neighbor elects not to participate in the applicable variance process)".

Mr. Kagler questioned if property owners needed to consent to it. He did not want to force the applicant to receive a benefit the people had to sign on.

Mrs. Lane said it would also include the homeowner of lot 8 who would have to be on board as well.

Ms. Mazur said as co-applicant in order to move this tank battery the Commission has the power to approve this and asked to consider the process of open space restrictions. She said there was no building on open space without consent by the City and the approval of this Commission would be necessary. She said that may prohibit an owner that would be aggrieved because the tank battery would be moved closer to their property and would essentially be foreclosed from doing anything and their right to the proposed move of the tank battery.

Mr. Kagler said the property owners in the adjacent subdivision have zero rights from the move and he wanted to provide some companion rights for property owners in the adjacent subdivision of the new subdivision.

Mrs. Barone believed they could contest the BZBA decision.

Mr. Tancer said he had discussed option 4 at a meeting. He said OVE would pay the fee for a variance for four (4) houses which could be affected but not for any future property owners affected for additions in the future.

Mrs. Lane said the variance runs with the land and option 4 was based on the revised December 20 plan. She was not sure it was in compliance to the 175 feet.

Mr. King said the staff report was written to approach number 4 to be more direct by specifying which properties should be included in the variance request.

Mr. Kagler considered the tank battery setback like a wetland setback. He did not think a lot could be platted where buildable area was completely within a setback. He said a lot had to be used for something and there should not be lots that have no value and cannot put something on. He thought it was creating a challenge.

Mr. Mulligan agreed with Mr. King. He said lot 10 still had value on a speculative basis. He said there was a difference between a buildable lot, a valid lot, and being able to put a house on a lot.

Mr. Kagler amended his motion for condition 6, "notwithstanding any non-participating affected property owners". Mr. Mulligan seconded the motion.

Mr. Dostal asked about notice. Mrs. Barone said this was a continuation of a case. Mr. King said notice was provided to those people who signed in at the last meeting, as well as property owners that could be affected by the tank battery setback for any of these locations on Valerie and Woodacre. Mr. Dostal said the only one affected was Mr. Edmonds. Mr. King said there had been no additional correspondence received since the December 12 meeting from any of the neighbors. He said there was an email received but not by someone affected by the setback.

Mr. Drew said the Commission was deciding this plan assuming the BZBA would grant a variance. He said either way this plan may be back to the Commission sometime in the future. He suggested designing the plat with the lines in the sketch which would only impact one new house rather than presuming a variance would be granted.

Mr. Drew asked about the blue dashed line. Mr. Richardson said it did not require a variance but had a greater impact on the homes on Valerie and Woodacre. Mrs. Barone agreed and said that would be her second choice.

Mr. Cox asked whether the applicant would choose his own circle. Mr. Drew said it was not necessarily up to what the developer wants.

Mr. Kagler said the one affected property owner built his house based on the tank battery location and would be as adversely impacted as anyone else. He said none of the homeowners created this problem.

Mr. O'Keefe was not in favor of having to get a variance.

Mr. Mulligan supported Mr. Drew's setback view if the BZBA variance was not granted.

Scott Lindner wanted to speak. Mrs. Lane said the last meeting was the public hearing. She said there was testimony and evidence given, the public hearing ended, and this meeting was for deliberation by the Commission. She said the motion to rescind was to further deliberation. She explained the applicant and Receiver spoke since they provided needed information. Mr. Mulligan said the person asking to speak was not one of the residents affected. Mr. Drew thought it was appropriate to listen. Mr. Kagler said because the public hearing was over, the introduction of any information should be new comments or comment related to the motion. He said the Commission was meeting to try to clarify a perceived flaw in the motion so the decision would be more understandable. Mrs. Barone said she would accept public comment only if it was something new.

Scott Lindner, 7548 Valerie Lane, said there was new information in the staff report. He had exception to the timing of the public notice of this meeting. He said at the last meeting there was a vote and approval which was not yet public information. He said there were no minutes available. He said the Commission was discussing two new drawings which information warranted the public eye. He said the implication was that moving the tank battery made lots buildable yet the wellhead was still there. He said the staff report had a setback of 100 feet concentrating on the tank battery but there was still a setback from the wellhead. He was disappointed in the public involvement, and the public notice to these neighbors. He said it was a disservice to a property owner by not allowing them the time to consider the same things as the Commission.

Tim Graham, 7551 Woodland Avenue, had the original Woodland Estates plat sheet 1 of 2. He asked whether the Restrictions and Covenants that were done in 2005 said that once nine lots were built then a homeowners association was established. He said that had not happened yet, it was a creation of OVE.

Ms. Mazur replied a homeowners association was formed by the Receiver under the pending foreclosure approval of the Court. She said they wanted to turn it over to the residents at Woodland Estates but they needed an address and were waiting for that information. She said if they did not get an address soon she was going to open a post office box to have a valid address of the homeowners association. She said OVE will be a member and has nothing to turn over to the property owners of Woodland Estates.

Monica RodriguezLynn, 7557 Woodland Avenue, said most people did not know what the notifications meant that went out regarding the tank battery relocation. She suggested in the future if there were any concerns to state in the notice that this may affect your ability to put an addition on your house.

Mr. Kagler said the comments from Mr. Graham were addressed in condition 1 of the original decision. He said regarding the setback to the gas well Mr. Richardson's drawing clarified the only lot close to the gas well setback was lot 10, and the plat this decision is based on proposals to remove lot 10. He said with respect to the notice question before the December meeting there was also a sign posted at the site.

Roll Call:

Aye: Mr. Cox, Mr. Dostal, Mr. Kagler, Mr. Mulligan, Mr. O'Keefe,
Mrs. Barone

Nay: Mr. Drew

Motion carried.

APPROVAL OF MINUTES

Mr. Dostal moved to approve the minutes of the December 12, 2011 Regular Meeting, as amended. Mr. Cox seconded the motion.

Roll Call:

Aye: Mr. Cox, Mr. Dostal, Mr. Kagler, Mr. Mulligan, Mr. O'Keefe,
Mrs. Barone

Nay: None

Abstain: Mr. Drew

Motion carried.

The Chair, Mrs. Barone, adjourned the meeting at 9:00 p.m.

Jennifer Barone, Chair

Nora La Lomia, PC Clerk