

**RECORD OF PROCEEDINGS**

Minutes of

CHAGRIN FALLS VILLAGE COUNCIL

Meeting

BEAR GRAPHICS 800-325-8094 FORM NO. SHTROP11

Held NOVEMBER 14, 2016

The meeting of the Council of the Village of Chagrin Falls was called to order at 7:00 p.m. by Mr. Maersch.

Member present: Berkobein, Lutz, Maersch, Mitchell, Muscenti, Newell, Rogoff  
 Members absent: None  
 Officials present: Mayor Tomko, Himes, Markowitz, Dacek, Leffler, Lannon

**APPROVAL OF MINUTES**

Moved by Mr. Newell, seconded by Ms. Rogoff that the minutes of the meeting held October 24, 2016 be approved. Carried. Ayes: Berkobein, Lutz, Maersch, Mitchell, Muscenti, Newell, Rogoff. Nays: None.

Moved by Ms. Rogoff, seconded by Mr. Newell that the minutes of the special meeting held November 7, 2016 be approved. Carried. Ayes: Berkobein, Lutz, Maersch, Mitchell, Muscenti, Newell, Rogoff. Nays: None.

**REPORT OF THE MAYOR**

Mayor Tomko congratulated the Chagrin Falls girls soccer team for coming in second place at State finals.

Mayor Tomko thanked the voters for their trust and confidence in approving the income tax levy. The village can now get on with the much needed repairs.

**REPORT OF THE FINANCE DIRECTOR**

No report.

**MEMBERS OF THE PUBLIC TO SPEAK TO AGENDA ITEMS (NOT TO EXCEED TWO (2) MINUTES PER PERSON)**

Bob Darden, Spillway Partners 51 Walnut Street, read a letter in opposition to proposed Ordinance No. 2016-59, mixed use zoning, that would eliminate the multi-family use. He asked why he wasn't given notice of this amendment?

**REPORT OF THE LAW DIRECTOR**

Mr. Markowitz thanked everyone for coming to the November 7, 2016 special meeting. It was important getting everyone's support. Tomorrow everyone will be getting a copy of the filed brief that was submitted to the Ohio Supreme Court. There were a number of other communities that also joined on.

**PLANNING AND ZONING CODE AMENDED**

Mr. Markowitz placed on the floor Ordinance No. 2016-59 entitled:

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AN ORDINANCE AMENDING THE PLANNING AND ZONING CODE OF THE VILLAGE OF CHAGRIN FALLS, AND REPEALING SECTIONS 1130.03(a)(3) AND AMENDING SECTION 1130.04(b), (c), (d), (f), AND (g), 1130.05(a)(2), 1130.06(b), 1130.07, 1130.08, 1130.09, 1130.09(a)(3), 1130.09(d), (e), AND (f) AND 1130.10(e) REGARDING REGULATION OF RESIDENTIAL USES IN THE RESIDENTIAL MIXED USE DISTRICT IN THE VILLAGE.

Mayor Tomko said he asked the Planning and Zoning Commission to look at the removal of the extreme density of twenty units per acre as he didn't feel that the majority of residents were aware of that as a potential development in the area. And if they were aware he didn't feel that they would be supportive of it. I think that is the premier piece of ground in our village and probably in northern Ohio. He thinks it has a higher and better use than dense apartment zoning. That was his basis of asking that it be looked at and removed.

Ms. Rogoff said she and the Mayor have talked about this early in the year and she had forgotten that they had such high density permitted in this district. She forgot that they had put it in and she doesn't remember that it was a big issue then. They more so looked at the commercial side of it, the brewery and the retail, and didn't focus so much on the housing otherwise they might have had a different thought on this. She thinks it is a nice piece of property but that is very high density zoning for what she thinks is a very delicate piece of property in terms of the setbacks, the buffer, and the hillside.

Mr. Maersch opened the meeting up to a public hearing.

Mr. Himes said originally it was limited industrial. There was a paper mill on the Spillway site. There were also other limited industrial properties in the land between Bell Street and East Washington Street just East of Philomethian Street where the old railroad property is. Bell Tower is also on that now. In 1993 the Planning and Zoning Commission was looking at that because those industrial uses were starting to go by the wayside. The railroad pulled out previous to that. They enacted the residential mixed use zoning district which basically sits on top of the limited industrial zone. Originally they had proposed to replace the limited industrial with the residential district and the property owners objected because basically it would have created nonconforming uses out of all the existing uses that were on those lands. Ultimately the Planning and Zoning Commission recommended the residential mixed use as a residential overlay. Limited industrial uses are still legal and can continue to that. The property owners can either use the limited industrial code or the residential mixed use. At that time they included the dense multi-family because they felt that those industrial sites needed some incentive to move towards residential. In 2009 when Spillway made their proposal for the brewery and restaurant, and really a true mixed use property, those changes that went to the voters were all changes to the limited industrial zone. The amendments that are in front of us do nothing to the voter approved zoning.

Mrs. Lutz said what types of structures does it allow? Mr. Himes said the residential mixed use (RMU) allows single-family detached, two-family detached, or attached single-family, which is two or more units attached side by side, and then also the multi-family which if this ordinance is approved it would take the multi-family out of it. Mrs. Lutz said if this had been in place before Bell Tower then Bell Tower would not be constructed the way it is? Mr. Himes said this is the

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zoning that Bell Tower used so they are attached single-family; they have three and four units in there.

Mr. Newell said it went through planning and zoning through all the review and discussion? Ms. Rogoff said yes, and they made some changes to it.

Mr. Himes said this was first introduced on Council's agenda on September 26, 2016 and then the referral went to the Planning and Zoning Commission and they made a couple of recommendations. It was amended and has been on readings since.

Mr. Markowitz said they are not re-zoning any specific property. All they are doing is changing the permitted uses in the RMU District so it doesn't require notice. There is no legal requirement in the code to give notice when you are just changing the uses within a given district. If you change the permitted zoning districts on a property then you have to give notice.

Mr. Darden asked again why he wasn't notified? Mr. Maersch said it has been on their agenda since September and they met all of their notice requirements under their code. Mr. Darden further spoke in opposition to the ordinance.

Darren Wyville, 203 Monticello, spoke in opposition to the ordinance.

Ms. Rogoff said she hadn't looked at the multi-family zoning for awhile, actually before this came up, and it is very, very high density and it is something that she thinks planning and zoning generally needs to look at. She understands their position and she is concerned that if they don't make this change now that it will take several, many months maybe to get a consensus on either redoing the multi-family section or doing something special for the limited industrial section so it would be one or the other. This is kind of an important thing to her to do this and if it is a concern they certainly would take a look at it. She thinks planning and zoning needs to take a look at the multi-family section notwithstanding any of their concerns. Somebody could come up tomorrow or next week and come up with the money and want to buy it and they would be able to do this. They would be able to put very high density units in there and there wouldn't be anything the village could do to stop them.

Mayor Tomko said they can always revisit the issue after this is passed and make amendments that would take the concerns into consideration. But right now he considers the village is sort of hung out and exposed to this very high density that frankly he doesn't think anybody really was aware existed. He would favor passing this and if they want to meet and discuss what modification needs to be made subsequently they could do that.

Mr. Wyville said they do not want high density on their property and potential buyers would have to present a plan to them before they would allow them to purchase the property. If the plan was high density it would never get through Council and that would be in the purchase agreement that if it didn't have Council's approval the deal would not commence. Ms. Rogoff said she is not sure that it would need Council's approval if the zoning stands as it is. Mayor Tomko said he is not either. What they need to do is eliminate the possibility and then discuss what Spillway's needs are subsequently and they are agreeable to doing that. Mr. Darden said they are willing to meet next

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week to talk this out. It is easier to fix now to make everybody happy as opposed to passing something and then having to fight to get a little bit back.

Mr. Newell said Mr. Wyville brought up the development agreement and that was passed by the Mayor and Council before he got on Council but he got pretty familiar with it. One of the things that he was kind of surprised in that document was there wasn't an expiration date. They all know this is going on eight years, entering its ninth year, but he doesn't remember anything in that document that says that, and he doesn't think any governing body could restrict the transfer of property between the current owner and the buyer but it is just going to be a lot cleaner if they, no one wants to see fifty, sixty units on that piece of ground. If they just get that off the table free and clear and then get something like what has been discussed in the paper the last three or four months then he thinks it will all be good because that project would have worked. He does not know that they need to keep referencing this development agreement. He wishes they could agree to put it to bed once and for all.

Mr. Wyville suggested that they change the language to a specific number rather than remove multi-family.

Dick Bodwell, 171 Cleveland Street, spoke in favor of the ordinance.

Ms. Rogoff said she definitely takes consideration of what they are saying but she just feels that the village is safer and better off adopting this ordinance tonight and then the Planning and Zoning Commission will start working on changing this zoning at their next meeting which is November 21, 2016.

Mrs. Lutz said she thinks that this is a really sensitive issue. They all want to see Spillway get developed appropriately. She said she doesn't understand that much about zoning and she doesn't know that much about developing but she thinks it is a really sensitive issue here and they want to look out for the village's best interest but they certainly don't want to hamper them from finding an appropriate buyer and developer for their property.

Mr. Markowitz said having heard and knowing how the planning commission is thinking and what the administration is thinking and hearing what Spillway is saying he thinks the only difference between them right now is that they would like the village to retain multi-family in the code until they make the change and the village wants to take the multi-family out now and then amend the code and give them what they want. He does not hear anything they are saying that is against what the plan would be to amend the code to allow attached single-family to accomplish what they want.

Mr. Wyville said passing this ordinance would make it more difficult to get the project done either by Spillway or someone else.

Mayor Tomko said he does not think the village should be at risk for a period of time without repealing this but he has no problem holding planning and zoning meetings to come up with some amendment in a prompt manner.

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Mr. Muscenti said it is a dangerous precedent for the village to try to craft their ordinance around a meeting tonight. He said he is not in favor of making promises tonight that they are going to do anything. There are other ways to go about making sure that they get, or at least have a conversation about getting what they get. To negotiate the planning and zoning ordinance over one piece of property during a Council meeting is inappropriate.

Mr. Markowitz said it is 100% certainty in his mind that whoever comes in to develop the Spillway property, even after the planning commission and Council passes something that they want, they are going to want to do something different. Whatever they do isn't going to probably be the final word on this subject. He believes that they can accomplish what Spillway wants and still protect the village from the high density multi-family that they are trying to get rid of tonight.

Mr. Maersch closed the public hearing.

Moved by Ms. Rogoff, seconded by Mr. Newell that the ordinance be adopted. Carried. Ayes: Berkobein, Maersch, Mitchell, Muscenti, Newell, Rogoff. Nays: Lutz.

Moved by Mr. Maersch, seconded by Mr. Mitchell that Council refer the issue of the requirements for attached single-family, Section 1127 and Section 1129, of the code to planning and zoning at their next meeting following this Council meeting. Carried. Ayes: Berkobein, Lutz, Maersch, Mitchell, Muscenti, Newell, Rogoff. Nays: None.

**EMERGENCY MEDICAL SERVICE AGREEMENT**

Mrs. Lutz introduced Ordinance No. 2016-65 entitled:

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN EMERGENCY MEDICAL SERVICE AGREEMENT WITH THE CHAGRIN FALLS SUBURBAN VOLUNTEER FIREMAN'S ASSOCIATION, AND DECLARING AN EMERGENCY.

Mrs. Lutz placed this ordinance on readings.

**SENIOR TRANSPORTATION CONNECTION AGREEMENT**

Mr. Mitchell introduced Ordinance No. 2016-66 entitled:

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH SENIOR TRANSPORTATION CONNECTION, AN OHIO NOT FOR PROFIT CORPORATION, TO PROVIDE CERTAIN TRANSPORTATION SERVICES FOR THE RESIDENTS OF THE VILLAGE OF CHAGRIN FALLS AND DECLARING AN EMERGENCY.

Moved by Mr. Mitchell, seconded by Ms. Rogoff that the requirement for reading an ordinance three time be suspended. Carried. Ayes: Berkobein, Lutz, Maersch, Mitchell, Muscenti, Newell, Rogoff. Nays: None. Moved by Mr. Mitchell, seconded by Mr. Newell that the ordinance be adopted. Carried. Ayes: Berkobein, Lutz, Maersch, Mitchell, Muscenti, Newell, Rogoff. Nays: None. Mr. Himes explained the changes to the contract. Comments were heard and questions were answered.

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## **BELNOBLE LLC LICENSE AGREEMENT**

Mr. Maersch introduced Ordinance No. 2016-67 entitled:

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A LICENSE AGREEMENT WITH BELNOBLE LLC TO PERMIT IMPROVEMENTS IN THE VILLAGE'S RIGHT-OF-WAY.

Moved by Mrs. Lutz, seconded by Mr. Newell that the requirement for reading an ordinance three time be suspended. Carried. Ayes: Berkobein, Lutz, Maersch, Mitchell, Muscenti, Newell, Rogoff. Nays: None. Moved by Mrs. Lutz, seconded by Mr. Newell that the ordinance be adopted. Carried. Ayes: Berkobein, Lutz, Maersch, Mitchell, Muscenti, Newell, Rogoff. Nays: None. Mr. Markowitz explained that this is tied in with Administrative Order 2016-68 where the Board of Zoning Appeals granted a variance that would allow portions of a ramp and staircase for the front of the building to be located in the village's right-of-way. One of the requirements of the variance would be to get a license from the village to allow the staircase to be in the right-of-way.

## **ZONING CODE AMENDMENTS**

Ms. Rogoff introduced Ordinance No. 2016-69 entitled:

AN ORDINANCE AMENDING THE ZONING CODE OF THE VILLAGE OF CHAGRIN FALLS AND AMENDING SECTIONS 1111.01, 1111.02(a), (b) AND (c), 1111.04(d), 1111.05(b), 1111.06, 1111.07, 1111.08, 1111.09, AND 1111.11 REGARDING REVIEW OF DECISIONS OF THE BOARD OF ZONING APPEALS BY THE VILLAGE COUNCIL AND PROVIDING FOR USE VARIANCES WHEN AN UNNECESSARY HARDSHIP EXISTS.

Mr. Markowitz said this is to provide for the new method of having variances heard with finality at the Board of Zoning Appeals unless a petition is filed by three members to bring it up in front of Council. He said he added a process for how the petition is done and who gets notice regarding use variances.

Mr. Maersch placed this ordinance on readings. He said it will be taken up by the Planning and Zoning Commission at their next meeting.

## **CODIFIED ORDINANCE AMENDMENT**

Mr. Maersch introduced Ordinance No. 2016-70 entitled:

AN ORDINANCE AMENDING CODIFIED ORDINANCE SECTION 137.08 OF THE CODIFIED ORDINANCES AND ADDING REQUIRED INFORMATION TO BE PROVIDED TO THE ARCHITECTURAL BOARD OF REVIEW.

Moved by Mr. Newell, seconded by Mrs. Lutz that the requirement for reading an ordinance three time be suspended. Carried. Ayes: Berkobein, Lutz, Maersch, Mitchell, Muscenti, Newell, Rogoff. Nays: None. Moved by Mrs. Lutz, seconded by Mr. Newell that the ordinance be adopted. Carried. Ayes: Berkobein, Lutz, Maersch, Mitchell, Muscenti, Newell, Rogoff. Nays: None. Mr. Maersch said this takes language that is already in the historical Village of Chagrin

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Falls Design Guidelines and forces the applicant seeking approval for certain things from the ARB to articulate how their proposed design matches these guidelines. This is modeled a little bit off of what happens at the BZA where applicants fill out a form that forces them to comment on how their proposed design matches the standards that the BZA applies in deciding whether they have met the standard for a zoning variance. It is the same concept at the ARB. The theory here is to force the applicant to think hard about how architecturally the proposed design, under Section 137.08(c)(1), compares, relates, or fits with adjacent or contiguous or neighboring properties and under Section 137.08(c)(2), how the proposed design compares, relates, or fits with the design guidelines in terms of all the things that are mentioned in the design guidelines.

### **CODIFIED ORDINANCE AMENDMENT**

Mr. Maersch introduced Ordinance No. 2016-71 entitled:

AN ORDINANCE AMENDING CODIFIED ORDINANCE SECTION 1111.03 TO REQUIRE PRELIMINARY APPROVAL FROM THE ARCHITECTURAL BOARD OF REVIEW PRIOR TO OBTAINING A VARIANCE FOR THE ERECTION, ENLARGEMENT, AND/OR ALTERATION OF A BUILDING.

Mr. Maersch placed this ordinance on readings. He said it will be taken up by the Planning and Zoning Commission at their next meeting.

### **CODIFIED ORDINANCE AMENDMENT**

Mr. Maersch introduced Ordinance No. 2016-72 entitled:

AN ORDINANCE AMENDING CODIFIED ORDINANCE SECTION 1115.04 AND ADDING A REQUIREMENT FOR THE ARCHITECTURAL BOARD OF REVIEW TO STATE REASONS TO SUPPORT THEIR DECISION AS REQUIRED BY THE PLANNING AND ZONING CODE.

Mr. Maersch placed this ordinance on readings. He said it will be taken up by the Planning and Zoning Commission at their next meeting.

### **VARIANCE REQUEST/210 BELL STREET**

Mr. Maersch introduced Administrative Order No. 2016-68 entitled:

FINAL ORDER OF COUNCIL AND CONCLUSION OF FACT REGARDING A VARIANCE REQUEST OF BELLNOBLE LLC FOR PROPERTY LOCATED AT 210 BELL STREET.

Moved by Mrs. Lutz, seconded by Mr. Newell that the administrative order be adopted. Carried. Ayes: Berkobein, Lutz, Maersch, Mitchell, Muscenti, Newell, Rogoff. Nays: None. Mr. Markowitz and Mr. Maersch explained the specifics of the variance request. Comments were heard and questions were answered.

### **STREETS AND SIDEWALKS COMMITTEE**

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Mr. Berkobein reported that they are setting up a survey to look for general interest on sidewalks for Walters Road and Hickory Hill.

**FACILITIES AND SERVICES COMMITTEE**

No report.

**PLANNING AND ZONING COMMISSION**

Ms. Rogoff announced a meeting for Monday, November 21, 2016 at 7:30 p.m.

**SAFETY COMMITTEE**

Mrs. Lutz reported that at their last meeting they talked about the EMS contract. She said she has been involved in some informal conversations about the change to the traffic signalization to allow a red light in all directions. The village did not receive consideration for the grant this year but they are going to try again next year. Mr. Himes said the engineers met with NOACA and they felt that the village had a good application they just didn't have enough money to go around.

**UTILITIES COMMITTEE**

No report.

**BOARD OF ZONING APPEALS**

No report.

**ADMINISTRATION AND COMPENSATION COMMITTEE**

No report.

**FINANCE COMMITTEE**

No report.

**PARKS COMMISSION**

Mrs. Lutz reported that they are working on their goals for 2017 and a wrap up of what they accomplished in 2016.

**SHADE TREE COMMISSION**

Mrs. Lutz reported that they selected and tagged around sixty-five trees for planting next spring. Because they are all small they did save the village some money. They are delaying their air knifing until next year. There are some plans to create some walking paths through the Ben King Memorial Garden Arboretum and perhaps use the new discovered path along the river.

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## ARTS COMMISSION

Ms. Rogoff announced a meeting for Monday, January 16, 2016.

## PARKING COMMISSION

No report.

## REPORT OF THE CHIEF ADMINISTRATIVE OFFICER

Mr. Himes reported that the head wall on the culvert on Solon Road, at the south end of the service garage in front of the Solon Road condos, is severely eroded and the material underneath the sidewalk has eroded into the stream. Quotes were obtained for those repairs and the lowest and best quote was from TC Construction at \$7,225. It is an unbudgeted expense. This is a temporary repair that will fill the void with concrete. Repairing the head wall and the rest of the culvert will be a bigger job in the future.

Moved by Mrs. Lutz, seconded by Mr. Newell to approve the unbudgeted expense of \$7,225 to repair the culvert head wall on Solon Road. Carried. Ayes. Berkobein, Lutz, Maersch, Mitchell, Muscenti, Newell, Rogoff. Nays: None.

Mr. Himes also reported that the County has awarded the design work for the Main Street bridge and the engineering firm has scheduled some core drills on Main Street for tomorrow morning.

## REPORT OF THE ENGINEER

No report.

## REPORT OF THE POLICE CHIEF

No report.

## REPORT OF THE FIRE CHIEF

No report.

## MEMBERS OF THE PUBLIC TO SPEAK TO ANY MATTER (NOT TO EXCEED FIVE (5) MINUTES)

None.

## MISCELLANEOUS

Mr. Mitchell thanked the members of the Charter Review Commission who served with him. All six of the submissions that they put together passed unanimously.

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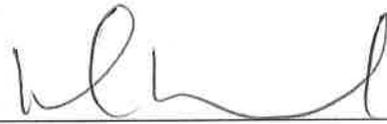
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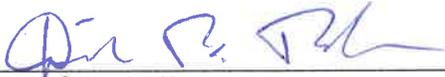
Mr. Maersch mentioned that he has been asked to give the curtain speech for the opening of Joseph & the Amazing Technicolor Dreamcoat at the Chagrin Valley Little Theater on Friday and Saturday.

## ADJOURNMENT

Mr. Maersch adjourned the meeting at 8:40 p.m.



\_\_\_\_\_  
President of Council



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Clerk of Council