

## CITY OF ROCKY RIVER

March 18, 2024

The Committee-of-the-Whole Meeting of Council was called to order by Mr. Furry, President of Council, immediately following the Special Meeting in the David J. Cook Council Chambers.

Council Members Present: Mr. Hunt, Mrs. Gallagher, Mr. Shipp, Mr. O'Boyle (7:20 p.m.)  
Mrs. Morris, Mr. Sindelar, Mr. Furry

Administration: Mayor Bobst, Mr. Thomas, Mr. Snyder

Law Director: Mr. O'Shea

### **MAYOR'S REPORT:**

The Mayor shared a few quick highlights from the past week. The City of Rocky River received the Community Recycling Awareness Award Grant in the amount of \$6,000, thank you to Director Snyder and Maureen Nakonek. This grant will be used for recycling educational materials as well as the shredding program which continues to be very popular.

The Mayor mentioned that the City received a letter from the National Arbor Day Foundation congratulating the city on its 40<sup>th</sup> consecutive Tree City USA Award. Congratulations to Rich and the Parks Department and all the arborists. In addition to this award, the city also received the Growth Award which demonstrates environmental improvement and an outstanding level of tree care for our Urban Canopy. In their press release, they say the trees being planted and cared for by Rocky River "are ensuring that generations to come will be able to enjoy them with a better quality of life." Congratulations to Director Snyder. The Mayor added that on May 16<sup>th</sup> the City of Rocky River will be hosting the Tree City USA Award Program from 8:00 a.m. until 3:00 p.m. It involves the entire region, Safety-Service Directors, Mayors and several individuals that will gather together to receive their awards. It will be wonderful to be receiving our 40<sup>th</sup> on that day. Director Snyder and others have been working hard and there has been a lot of enthusiasm in the community with sponsorships and individuals wanting to be a part of that day.

The Mayor announced that Director Snyder received from the American Stormwater Institute, the following initials after his name "Q.L.I.D.I.", which stands for Quality Low Impact Development Inspector. Rich is now an MS4 Inspector and a Green Infrastructure Inspector in the city. The Mayor greatly appreciates that Director Snyder took the time and did this on his own. Thank you, Director Snyder.

The City Hall Campus will be having tuck pointing done around the campus especially on the City Hall Building beginning sometime this week, weather permitting.

The City received notification regarding the Appropriations Bills that have been passed in Washington D.C. recently. Six Bills have been passed and this regional area was well represented in the dissemination of funds. \$2 million to Cuyahoga County 911 systems upgrade important to the City of Rocky River as the WestShore is looking at Consolidated Dispatch in the Westshore. The Ohio Aerospace Institute Workforce Development Grant; Bay Village, North Olmsted, Fairview Park for sewer projects; and the City of Rocky River received \$1 million for the Wooster/Rockcliff Project.

The Mayor said the WestShore Enforcement Bureau's Annual Report was released last week when the Council of Governments met. The WestShore Enforcement Bureau (WEB) is a very large part of the WestShore Council of Governments, working with all Police Departments on narcotic issues, drug drop boxes, WestShore Young Leaders, SWAT, Crisis Negotiations, Hazardous Devices, the Community Emergency Response Team that Julie Morron coordinates from our Police Department on behalf of the entire WestShore Community. The Mayor will get a copy to Councilman Hunt as Chairman of the Safety Committee.

Election Day is tomorrow. There are three polling locations, with polls opening at 6:30 a.m. until 7:30 p.m.

The Mayor announced that Sue Butler's Memorial Service will be this Friday at 1:00 p.m. at Rocky River United Methodist Church. The Mayor said that Sue Butler was a former At-Large Councilwoman that the Mayor had the pleasure of serving with her first several terms, and a former School Board Member who passed away a few months ago.

- Mrs. Morris asked for a copy of the Press Release for the Arbor Day Award.
- Mrs. Gallagher asked Director Snyder if the shredding day paper is recyclable. Mr. Snyder said in the city's usage, it is not, but he believes the companies that shred, do recycle it but it is a different process. The Mayor said it depends on what is allowed to be shredded which could be problematic for any kind of clean paper recycling. If it is paper only, yes it can be recycled. If it includes binder clips, paper clips and/or plastic, that could be problematic.

#### **COMMITTEE REPORTS: NONE**

**COMMUNICATIONS OR ANNOUNCEMENTS:** President Furry said that City Council received an announcement for the first graduating class of 2024 for the Citizens Police Academy will have their graduation on March 26<sup>th</sup> at 7:00 p.m. at Memorial Hall. The Commencement Address will be by Retired Judge Donna Congeni Fitzsimmons.

#### **UNFINISHED BUSINESS:**

**AMENDED ORDINANCE NO. 51-23:** Mrs. Gallagher said this amended ordinance is to change the zoning classifications of four parcels located on Ingersoll Drive from their present classification of Service Manufacturing to OB-2 Office and is on hold.

**2<sup>nd</sup> AMENDED ORDINANCE NO. 80-23:** Mr. Furry recognized Chairman William Bishop in attendance this evening to answer questions regarding this ordinance. Mr. Bishop introduced Mike DeMarco and Dave Allen who are the three longest standing members of the Planning Commission to recognize that as Chair, it is not a one man show. Kate Straub is here also because of her knowledge of the Zoning Code and if he forgets something one of the three will jump in. Mr. Bishop began by holding up the Development Code that the city is bound to right now from 2010 which was passed in 2012. This is available to all Council members online and is a great reference and could have helped answer some of these questions much earlier. Mr. Bishop held up the Master Plan, which is a supplemental guide to the Development Code, but the Development Code is what Planning Commission considers their bible. This is what binds us to most of the decisions. Mr. Bishop held up the current zoning map that was adopted in 2012 with the 2010 Development Code saying that this is also available to everyone as a reference.

Mr. Bishop addressed Mr. Hunt's question concerning, e library, cultural institution and g cultural institution and said it is an error and will be struck. It is a redundancy and is repeated in the document.

Mr. Bishop provided a chart summary of requirements for commercial zoning districts which is the R-4 and up, local business, general business and the two office districts. Looking at this chart, it shows that as the heights come down the coverage allowance typically goes up. To do any kind of development there has to be opportunity but there also must be economic opportunity and these codes are designed to guide and allow for that opportunity. As an example, if the city changed the code and said all single-family lots must be 5 acres, then there would be no development. It is a balancing act. Mr. Bishop did a presentation at the Public Hearing and a theme that they have been working with on the development of the new code is that they are trying to get all the commercial districts to align together. All of them had a mixed use overlay component that was available but no one has ever used that mixed use overlay component. It is very problematic, cumbersome and most developers are not going to want to go through that procedure. Many office buildings are being retrofitted into residential or mixed-use and in working on developing the new code, they are trying to take all the commercial districts and align them generically as much as possible. It will take confusion out of the code and essentially the mixed-use overlay will allow mixed-use in all districts, so why not include it in OB districts also.

If you look across the chart, you can see where heights relate to coverage. In the OB district, with bringing the heights down, they felt it necessary to expand the coverage slightly and to align with the other coverages particularly in the R-4 and R-5 because those are where these opportunities will lie. At the same time the side yard setbacks are greater, recommending increasing them from 5 feet to 10 feet. There are many other limiting factors such as setbacks and parking requirements that control coverage. When a developer looks at a property, they must take these puzzle pieces and try to put them together. Mr. Hunt asked if the coverage applies only to the main use. Mr. Bishop said it applies to the building footprint. There could be many uses within one structure. Currently there is no maximum impervious coverage in many of the districts. In working with the development of the new code, they will propose that all districts have a limit on impervious, which is a combination of the building footprint and all the other pavement, driveways, parking and sidewalks. Everything that is impervious is added to the footprint to come up with that maximum impervious. The Mayor said this is stormwater management. Mr. Hunt said parking and all of that as part of the coverage, potentially could have a lot of impervious area. Mr. Bishop said if you wanted to max out on a site with 75% impervious and a 40% building footprint there would be 35% for impervious. Impervious does include the footprint. A rooftop is part of the impervious so it is the two put together. Mr. Furry asked what if they had a rooftop garden. Mr. Bishop said that is really a stormwater management that would be affected. Mr. Sindelar asked about parking lots with drain basins with plants, would that subtract off because it is a drainage area. Theoretically, they get people close and then suggest that they do more. It is still a revolving or moving target, these things are developing very quickly.

The Development Code came before the Master Plan. The theme of the Master Plan is walkability, connectivity, being pedestrian friendly and so with the County Planning Commission working with us, most development now is working towards bringing things up closer to the right of way. The trend now is to go back to the 1920's style of development in the way Lakewood was developed along Detroit and Madison Avenues. It started with moving buildings forward and with that putting parking to the rear is being promoted and, in some cases, required for aesthetic reasons. Mr. Hunt said that makes perfect sense to him in terms of why and what the genesis of this is, although he does not find that style aesthetically pleasing. Mr. Bishop addressed Mr. Hunt's comment relating to 700 Lake in last week's minutes. The setback per code is 25 feet and is similar to Astor Place, which has a taller elevation and Beachcliff Row.

Mr. Bishop addressed Mrs. Morris' concern about the 75 feet next to a residential. Mr. Bishop said in the Public Hearing previously, there are no parcels adjoining an R-1 or R-2 district that are zoned OB-1 or OB-2. There is one parcel at the end of Plymouth, OB-1, that abuts the cul-de-sac that comes off Hilliard and it is the newer little building. Her concern is that potentially could go from a 30-foot house to a 75-

foot building. Mr. Bishop said that in theory, it should not work that way. In theory, a lot of thought was put in on the zoning map related to heights. The entire zoning map was designed with consideration for residential. If you look at local business, it has consideration at 35 feet to all the adjoining residential. If someone came in and asked for a rezoning of an OB-3 or OB-2 next to an R-1 or R-2, that must go through the same process of City Council, Planning Commission and Mr. Bishop would hope that all the people sitting here would say it is not appropriate. The other thing is you must be careful not to spot zone. When the Planning Commission looks at rezoning, the first thing they look at is what is adjoining and is it appropriate. If someone is asking for service manufacturing for an OB-1 or an OB-2 there is adjoining OB and it makes sense. It is a continuation of the zoning. In the case of residential, there are very few places you could consider trying to plot that down but then that would be back to spot zoning. That would never happen, unless there were two groups, Council and Planning, saying great idea. The Mayor said that Council controls budget and rezoning and there are a lot of scenarios that can be discussed about various aspects of the Development Code, but at the end of the day zoning is what happens here and Council is in complete control of any rezoning with the assistance of the Planning Commission reviewing and working with developers. This helped Mrs. Morris very much. She wants to be sure that the city is very considerate.

Mr. Shipp asked Mr. Bishop to explain why we need OB-3 when there is a grandfathering clause already. Mr. Bishop said we need OB-3 for a couple of reasons. The goal on Planning is not to create more nonconforming. Their goal is for everything to be conforming. Planning does not want to create more nonconforming. They are not supposed to create nonconforming. There is nobody that has come before them that they have created nonconforming. The code does not permit them to create nonconforming. Most of the time, they are eliminating nonconforming. The Development Code is their bible and that is what they follow. The Master Plan is their guide and where the connectivity, walkability, moving the parking to the rear, aesthetics and tying things together. Mr. Shipp said there is a body of Ohio Case Law that talks about a City Plan being evaluated in a denial of a variance or some other zoning request. The question he has after reading these cases, is our Master Plan going to be used against us at some point in analyzing whether a variance is granted or not. The Planning Commission does not grant variances, that is the Board of Zoning Appeals. The Mayor said you must look at Charters, townships verses cities, there are a lot of layers. In our community, the Master Plan is defined in the way it is defined different than what would be a Comprehensive Plan in an area that is currently being developed. Mr. O'Shea said Mr. Shipp read other cases from Westlake about a decade ago, that talks about the fact that their plan was a single factor but not a controlling factor in resolving litigation based on zoning disputes, so it can be a factor but not a controlling factor or an only factor. Mr. O'Shea said that when 80-23 is being debated, Council cannot talk about a specific project and there are factors in 1135.19 that Council must focus on which are different than the factors in 1135.21. Mr. Bishop said that the Development Code specifically states what the Master Plan is and what its mission is. The Mayor said that both the Land Use Commissions and developers use the Master Plan and the city is thrilled about that. It is used on both sides to punctuate something that a developer wants or for the city to punctuate why we may not allow something. The Mayor does not want to diminish how important the Master Plan is and the significant work that stakeholders, primarily the residents put into this document and how it is used. Mr. Bishop said that what they are working towards is that the Development Code is behind the Master Plan and it is still their bible, but they are trying to bring it up to more modern development in these kinds of communities and have it aligned more with the Master Plan.

Mr. Bishop said in Chapter 1139 page 126 it clarifies that nonconforming buildings or structure that is damaged or destroyed by any means, may be restored to the original footprint and floor area of the building or structure providing reconstruction is begun within six months of the damage or destruction. The Hilliard Condominium Building that burned down for example, Mr. Bishop is not sure they settled their insurance in six months, let alone develop new plans, engineering, Planning Commission review and other necessary development pieces. Mr. Bishop said whether a building is conforming or

nonconforming, it would not be pulled off in six months. Mr. Shipp thanked Mr. Bishop for clarifying that. Mr. Bishop continued by saying that the code also talks about zoning certificates. Theoretically, you could not issue the zoning certificate because it says it has to comply with the book. If it is nonconforming, it does not comply. The idea for the OB-3 is to essentially protect three properties so they would not get in the dilemma of the lender knowing this is nonconforming; we cannot get a zoning certificate and in today's world there are sophisticated lenders and if they know the game they will ask that question along with a good appraiser or they will validate it. It happens often. The OB-3 is just for those three properties. Beyond that it means nothing. It would have to go through that same process just discussed. Mr. Shipp said that the reason it matters to him was that depending on how this was accomplished, is it a different standard to go from OB-2 to OB-3, a property owner says they want to rezone from 2-3, what kind of scrutiny is that put under. What is the standard for granting zoning. Mr. Bishop said that Council would have to determine the appropriateness of that request based on if there was an OB-3 next door. Mr. Bishop said variances are appropriate at the right time, but the code is antedated. It is not up to date with the national standards. That would be why a variance would be recommended. Mr. Shipp said that if OB-3 does not exist and someone wants to build higher than OB-1 or OB-2 allows, they must seek a variance. That is determined whether that variance is appropriate based on a set of factors such as unnecessary hardship. But if someone comes in and wants to change from OB-2 to OB-3 that is not a variance and is much more restrictive and it would be rezoning. Mr. Bishop said that variances are a much easier route for anyone if they get their variance. Mr. O'Shea said that under the current Charter, if the BZA grants a variance, it does not get Council review anymore. Mr. Shipp has seen a document at a workshop that says variances can be essential to the proper function and the administration of the zoning code but what he has read is that variances are not considered a negative thing. The Mayor said the city does not want substantial variances; they are a slippery slope. Planning is very careful about the precedent. That could open a door to potential legal issues. Mr. Hunt said that there is also a distinction about use variances and area variances. Area variances are a very specific set of circumstances beyond unnecessary hardship applies to the use variance standard. The Planning Commission does negotiate compromises through variances and that is a positive thing. Most developers don't want to get into a lawsuit and want to negotiate it out, move on and start developing. Time is money. Mr. Shipp thanked Mr. Bishop for answering these questions and it has been helpful for him to hear direct answers to his questions.

Mr. Hunt echoes Mr. Shipp's gratitude and he appreciates all the members here and Kate's attendance, but he wanted to go back to the minimum and maximum setbacks as they currently stand in OB-1 and OB-2. The handful of parcels on the westside of Smith Court that are zoned OB-1, as the buildings stand now, if there is a 25-foot setback where would parking be included. Mr. Bishop said it will be very limiting. If you look at the west side of Smith Court, to have development you must have economics and those small shallow parcels make it more difficult. It would be very difficult economically to buy those today, tear them down and do anything. Moving forward would help but site acquisition for more than one property would help even more. Every time you acquire a property, you are eliminating another side setback in putting it together. The farther you can acquire, the more advantageous. There are more properties like that and there are difficulties on the north side of Center Ridge with grade etc. Center Ridge Road would be a case for a variance.

President Furry said this is a citywide issue and not an individual project. Council needs to look at 1135.19 and based on Planning Commission's recommendation, Council can accept the recommendation, but if it is rejected and/or amended, Council would need a super majority vote.

Mrs. Gallagher asked if Chapter 139 would be addressed down the road regarding the grandfather clause. The Mayor said that holds their feet to the fire on the nonconforming uses. Mr. Bishop said that is a good thing. Mr. Furry said it keeps the city in control. It can be extended case by case. Mr. O'Shea said that 1139.07 says that is the deadline by which construction is to have commenced not completed. What

constitutes the commencement of construction. Mr. Bishop said it is defined by moving materials on site that are put in place. The Planning Commission's philosophy would be to eliminate the nonconforming because we would not want to create a new nonconforming. As an example, if this property burns down maybe they go together and start a site acquisition and end up with something much better instead of another nonconforming. We may even be able to get rid of two nonconforming. There is a mechanism that if you are in good faith, you can ask for a variance from that deadline. The Mayor said that on the part of the property owner, they want to move on it because they want to protect that nonconforming aspect so they are working on it. Mr. Bishop said that the best thing they could do is come in with a project and become conforming after the six months.

President Furry would like to get a consensus on this ordinance and bring it to a vote next week. Mr. Furry thanked Chairman Bishop, other members of the Planning Commission and Kate Straub for attending this evening's meeting and for their service.

**AMENDED ORDINANCE NO. 7-24:** Mr. O'Boyle said this ordinance was remanded to the Planning Commission and is on hold. There will be a Public Hearing on this ordinance scheduled for March 19<sup>th</sup> at 6:00 p.m.

**ORDINANCE NO. 15-24:** Mrs. Gallagher said this is for the prefabricated restroom building for Bradstreet's Landing. This is at a cost not to exceed \$182,713.72. Mrs. Gallagher asked if anyone had any questions on the facility that she showed Council last week. The cities of Marysville, Findley, Lewis Center and Concord have all used this company, Romtec, Inc. This restroom facility will be located in the southwest portion of the park and includes two unisex ADA compliant restrooms that will be heated and open to the public year-round. It will also have a mechanical room with limited storage and a water fountain bottle filler. A bike rack will be added and potentially a bike service station. MacKay Engineering is in the process of developing the plans for the utilities of the building and due to the elevation of the building compared to the depths of the sanitary main on Lake Road, it will also need a small sanitary chopper pump to take sanitary sewage to Lake Road but the equipment will be much smaller than was previously in place with the old restroom. A search of the auditor's website finds no unresolved findings. This will be on next week's Consent Agenda.

- Mrs. Morris asked if it is going to back up to the parking lot of the store next door. The Mayor said it is between the parking lot and the walkway that comes down from Lake Road. Mr. Snyder had a picture of where it would be situated and shared that with Mrs. Morris.

**ORDINANCE NO. 16-24:** Mr. Sindelar said this was read for the second time at this evening's Special Meeting. This is an annual ordinance and recommends staying with Fabrizi as they were the lowest and best bid. Mr. Furry said that Fabrizi has been in place a long time and has done other jobs for the city. Mr. Sindelar said this is an actual emergency ordinance for emergency sewer repairs and money is set aside in the budget for emergencies. Fabrizi has kept their prices stable for the last eleven years. Their price this year is lower than it was in 2023. This will be on next week's Consent Agenda.

## **NEW BUSINESS:**

**ORDINANCE NO. 17-24:** Mr. Sindelar said this says to enter into an updated agreement with the WestShore Council of Governments, but the agreement itself looks like it is a new agreement. He thinks the title should be amended. This is the establishment with the designated cities renumerated below, essential for shared services. There is a statute that allows for this in the State of Ohio and this outlines some of the basic agreements between the cities pertaining to emergency situations. The Mayor said there is an addition of a fire component detailed in their by-laws and the Community Emergency Response Team because there is one staff member, a coordinator, which is compensated. It was cleaning

up the agreement.

- Mr. Furry asked about the WestShore Young Leaders. Does that need to be incorporated on paper as opposed to practice as part of WEB. The Mayor said that the Young Leaders do important work and is recognized regionally as being a wonderful program for young adults in high school and middle school. Mr. Sindelar said that may be part of recruitment tool too for the safety forces.

**MISCELLANEOUS BUSINESS: NONE**

President Furry said the next City Council meeting will be held on March 25<sup>th</sup> at 7:00 p.m. The meeting was adjourned at 8:19 p.m.

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David W. Furry  
President of Council

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Susan G. Pease  
Clerk of Council