MINUTES OF THE SPECIAL MEETING OF COUNCIL
Mayfield Village Civic Hall
Monday, June 4, 2012 – Immediately Following Caucus

The Council of Mayfield Village met in special session at Mayfield Village Civic Hall on Monday, June 4, 2012 immediately following Caucus. Council President Buckholtz called the meeting to order at 8:55 p.m.

ROLL CALL: Present: Mr. Buckholtz, Mrs. Cinco, Mr. Marquardt, Mrs. Mills, Mr. Marrie, Dr. Parker and Mr. Delguyd

Also Present: Mayor Rinker, Mr. Wynne, Ms. Calta
Mr. Cappello, Chief Edelman, Mr. Metzung,
Mr. Metzung, Chief Mohr, Mr. Thomas, Mr. Esborn,
Mr. Hartt, Mr. Dinardo, Mrs. Wolgamuth and Mrs. Betsa

Absent: None

The Pledge of Allegiance to the Flag was given.

OPEN PORTION

5-minute limit imposed by Chair. Those who wish to speak must first state their name and address. (The public is requested to limit their discussion to agenda items only.)

There were no comments.

- **Motion to go out to bid for the 2012 Street Striping Program.**

Mrs. Mills, seconded by Mrs. Cinco, made a motion to go out to bid for the 2012 Street Striping Program.

Roll Call: AYES: All
NAYS: None

Motion Carried
Bidding Authorized

- **Motion to go into Executive Session relative to collective bargaining and imminent litigation.**

Mrs. Mills, seconded by Mrs. Cinco, made a motion to go into Executive Session relative to collective bargaining and imminent litigation.

Roll Call: AYES: All
NAYS: None

Motion Carried

Council President Buckholtz advised everyone that Council will be leaving for Executive Session. We will be back for a formal Council hearing on Case No. 2012-01 on a Board of Zoning Appeals item. I would ask you to patient. We will be back.

Council left for Executive Session at 8:27 p.m.

Council reconvened at 8:55 p.m.

Council President Buckholtz stated, the next agenda item we are here for is a formal Council hearing regarding the appeal filed by Charles Kinnaird from the decision of the Zoning Board of Appeals, BZA Case No. 2012-012.

- **Formal Council Hearing:**

  - **Appeal filed by Charles Kinnaird from the decision of the Zoning Board of Appeals (BZA Case No. 2012-01).**

Council President Buckholtz stated, we would ask the Appellant Charles Kinnaird to come up to the podium and state your name and address. Your testimony is limited to 15 minutes as a guideline. That's not a law or anything. We would like to handle this civilly. We will not be deciding anything tonight. This is just a hearing to understand. Council is pretty well up to speed on all of the documentation that has gone on before. We like to think that it basically comes down to people and seeing if we can work things out. We have a legal responsibility to act in a certain way.

Diane Calta asked, anyone who is going to be testifying tonight, if you could stand, raise your right hand, swear to tell the truth, the whole truth and nothing but the truth, so help you God.

The parties responded, I do.

- PRESENTATION OF TESTIMONY –
  - (Testimony is limited to 15 minutes from each party)
    Appellant Charles Kinnaird has the right to reserve a portion of his 15 minutes for a final rebuttal if he so chooses.

Charles Kinnaird
294 SOM Center

I originally came up to file an appeal for the variance and setback primarily for the east border which abuts my property. Pretty much all of the setbacks were approved and I felt that it was a little bit too close with the parking lot only being 20 feet off my property. With the construction of it, it would kill any kind of mature tree that I have with the drainage and grading that is going on there. The root system would all be destroyed. I was only asking for, not the whole east boundary, but from where my property was adjacent to. Basically about half of that to be brought back a little bit further. The building was at 100 feet. It's now at 57 feet away from my property. I was concerned about the privacy, the height of the building, just looking into my backyard and other things as far as people being in the backyard, being so close to them.

Mike Gatto and myself finally got together this evening. We went in the back and talked over a few things. Hopefully he can do some buffering where I am still going to have some privacy. If we had mounding or something, to have a safe grade for me to mow, it would actually take away half of my backyard. So right now, I am reluctant but I am in agreement with Mr. Gatto that if he can take care of me as far as mounding, he said he would put trees in and do some drainage work and would try and keep a few of the mature trees if possible in the backyard. Right now, I will kind of retract the appeal because of the meeting that we have had.

Council President Buckholtz asked, what is the process?

Ms. Calta stated, Mr. Kinnaird, this is your appeal, so if you would like to withdraw it at this time, you certainly can. The only note that I would make is if you do withdraw it, it is withdrawn. It's not something you can renew at another time. However, this matter will be going through Planning again. When it is presented to Planning in more detail as far as the actual plan. The other option that I would throw out to you is if you wanted to continue this hearing, however it looks like you are in a position that you are working with Mr. Gatto and you would like to proceed down that path.

Mr. Kinnaird stated, we touched on a lot of things. I want to be involved. I want to be in meetings with the engineers as far as how they are going to divert water and the drainage and what we can legally do as far as the heights of fences, the heights of mounds. Like I said, I don't want to lose half of my backyard to put up a mound to keep my privacy. That's my biggest thing, is losing it and that's why I propose to just my property line only, not the whole east property line, just leaving that setback to where it was.

Council President Buckholtz stated, as I said, whenever we can work things out without a legal fashion, but I just wondered if we would still want to, we swore in other people. I do have some

suggestions, one of the things I neglected to say is, whenever we have people make comments they need to be to Council which you have done well and I would advise the other folks as well. People don't talk to each other, they talk through Council. But something you said that was very interesting is that working together and being involved which is a wonderful thing. I think that that's the role of our leadership and government. If this would come to fruition, your involvement, like if our Building Commissioner is meeting with the developer and you can be involved with that, that would be great. I think we all understand your concerns. We have been through this before. The Mayor and I live on Worton Park and had a giant company called Progressive build in our backyard, so we are schooled on how it can be a positive thing. A lot of positive things can come out of it. Having said that, if you are willing to let the other folks speak and then we can take it from there.

Mr. Kinnaird stated, I am kind of putting my trust in them that they are going to come through. Am I happy about everything? They have a right to build. I get that. But I want my privacy. I am not trying to pass for anything more than that. I don't want to use up half of my backyard to sustain that property at my cost. But if we can work it out and I can put my trust in them, like I said, I do want to be involved in all of the meetings with the engineers. I have been through this before with obviously the golf course. I know where the water goes. I know how it flows. I know the difference that the water made once all of the mounding was brought up to the soccer fields. Just being very aware of the surroundings, what little things happen over there. Obviously you have seen before, you had Doug put in a swale, how much water actually did come down there.

Council President Buckholtz asked, how long have you lived there?

Mr. Kinnaird replied, since 1995.

Council President Buckholtz stated, you would be very helpful to know the terrain and what happens there.

Sam Cannatta

I am here representing the development with my partner Michael Gatto for the property in question. We will continue to work with Mr. Kinnaird and make good on any problems he has to protect his property and his interests. We have offered to do drainage and stormwater damage and if he would like landscaping, fencing, all that. That's not going to be a problem. We will continue to work with him. There's just an issue that kind of, he withdrew his appeal tonight. I just want to get a clarification that the appeal is withdrawn. Now we can move forward to the next phase. We have been at this for about a year and a half now. My understanding is the next phase of this project for us would be to go back to Planning after we have gone to Zoning and got all these zoning variances. So now we are going to go back to Planning for a more specific development. Is that the process?

Ms. Calta replied, that's my understanding.

Mr. Cannatta stated, okay. As we go back to Planning now, we are all going to have the understanding that we have these variances in place and those cannot be appealed any more. Is that correct?

Ms. Calta replied, that would be correct, so long as they don't change.

Council President Buckholtz stated, that was the idea of taking the oath. We are on the record here. So typically when we do larger scale projects, there's something along the lines of a Development Agreement. I don't think you need something very cumbersome. We have been following a little bit. I know you guys have had discussions and there's been some good ideas passed back and forth. Mr. Kinnaird is clear that it's on you to provide the screening and some drainage without taking up his whole property. It sounds like you are amenable to this kind of arrangement. This would just go on to P&Z.

Mr. Cannatta stated, we have told him we will work with him throughout the process. As we go to Planning, it will be public record and he will be able to see what the engineering is. I just wanted to make sure because he is not represented here by an attorney that he really is, he knows what he is doing when he is withdrawing his appeal and now he is losing that right. Maybe I am sticking myself in the foot here, but I just wanted to make sure that he's fully aware and on notice that that's the situation.

Council President Buckholtz stated, that's showing that you are a standup guy with your concern. I am going to turn this over to two people, but what I was trying to explain to Mr. Kinnaird as well in a different way is he is automatically represented here. He's a taxpayer. He's a resident of Mayfield Village. He's represented by the Building Commissioner and our Planning and Development Department. That's what all elected officials and what the Administration is here for. So, we have a responsibility to him and if you are coming in to become a commercial resident so to speak, then we have an obligation to you as well.

John, Dave, you both had comments?

John Marrelli stated, I had a suggestion for Mr. Kinnaird if he is interested. Because the final drainage plans haven't been developed and you can speak of mounds and you can speak of trees and fences and things, but until they are on paper and they are on a plan that is approved, you might want to withhold giving up your right. I'm not a lawyer, but if that was me, I would wait until I saw it in writing.

Mr. Cannatta stated, that's exactly what I am talking about. We are here to talk about the variances and only the variances. He put in for an appeal to object to one or all of the variances. He withdrew his appeal. He is going to have an opportunity talk at the next Planning meeting when we have specific drawings and plans. That's another matter. We will put up a 10 foot fence if you want. I know you are all representing him, but I don't want this to come back to us.

Council President Buckholtz stated, John, it's already come from the Law Department that in order to go forward to Planning and Zoning stage, he has to be clear of these variances one way or another.

Mr. Hartt stated, to Mr. Kinnaird's comment about this going right to the Planning Commission. It was my understanding that one more piece of information would be available before it went back to the Planning Commission. That's the wetlands delineation because we want that additional level of understanding that this is a realistic plan before the Planning Commission delves into this any further. That's number one.

Council President Buckholtz asked, where does that come from?

Mr. Hartt replied, that's their responsibility. My understanding is they were already moving ahead on the wetlands delineation so that that information was going to be forthcoming.

Mr. Cannatta reported, we had a preliminary walk-through with a couple wetland experts but we have not signed a contract yet. We were waiting for this meeting. If these variances were going to be somehow pulled back or rejected, then we would have had to rethink the development and moving forward. As soon as this matter is clear, we will sign an agreement to go ahead and do a wetlands delineation and then we will disclose that to the Village.

Mr. Hartt stated, the second thing, two matters that have been talked about tonight, the landscaping and the buffering, screening, etc., as well as the stormwater management for the area, were both conditions of the Board of Appeals' approval of the variances. They are officially obligated to work it out. It was the understanding and I don't think Mr. Kinnaird has changed, that recognizing he doesn't want half his yard to be buffering that some of that buffering can occur on his property.

Council President Buckholtz stated, some, but not all.

Mr. Hartt stated, but not half the backyard.

Council President Buckholtz asked, Mr. Kinnaird, did you hear that?

Mr. Cannatta replied we are going to have to obtain construction easements. If he allows us to come and put mounds on his yard and landscaping, we are going to have to obtain easements for construction. I don't think permanent easements, but at least construction easements. We will have to work that out with him.

Mr. Kinnaird, all your easements will be done on the 286 property?

Mr. Cannatta replied, we plan on entering from our property, from the Commons, yes. And that shouldn't be a property. But we are going to have to get on to your property. You may have to grant us, usually what is given is maybe a 30 foot construction easement to do the work we need to do and then once the work's done we come out and pull out and landscape or put it back to the condition.

Council President Buckholtz asked, restore what was there?

Mr. Cannatta replied, and then the easement is extinguished. We can't come back on. That's generally what happens. You wouldn't want a permanent easement.

Mr. Kinnaird understands that. As long as this is two stories and stays not above two stories. I am good with that.

Michael Gatto
29010 Chardon Road

That's one of the agreements that we have. It is two stories. We will keep it at two stories. We will be able to build screening to reasonable satisfaction. We talked for quite some time about reasonable. There's more of an issue between you guys than there is between us. We are going to need the construction easement to get on there, do some mounding, depending on whether or not we can get a variance taller than 6 foot, that would determine the height of the property. If it's a one story in the back or a two story in the back, that's going to also determine a variance on screening height. Basically, we are in agreement that we are going to work things. We both understand. We are both on the same page. As we go forward and lay out the plans for the back buildings, even the front buildings, this will become more prevalent and more discussion will be had. We are kind of in agreement on this. As we lay out the plans for all of the drainage and easements, like you said, we will be able to work all this into it.

Council President Buckholtz stated, well, while you are both standing there, it's a perfect time and then we will give Mr. Kinnaird the final opportunity to affirm wanting to withdraw if that's what you choose to do. I just wanted to echo what Dave Hartt said, that there are certain stipulations and conditions already in there that were done at BZA, isn't that correct? That's what you are referring to, Mr. Gatto in terms of, there's already a Development Agreement. My understanding is as you firm up the actual footprint of the property which will happen with P&Z, again there will be stipulations.

Mr. Gatto replied, exactly.

Council President Buckholtz asked if there were any other comments.

Ms. Calta asked Mr. Kinnaird, I just wanted to make sure that we are understanding that you have withdrawn your appeal.

Mr. Kinnaird replied, yes. Reluctantly. But I am putting my trust in these guys that they are going to come through. I am not happy about the 20 feet off of my back property line because of the mature trees that won't ever be able to be replaced there. I would like to see it back further, the parking anyways, from 20 feet to 40 feet, just to leave a few of those trees in there. I understand when they do come in there, I would like to see with the two stages of this, to leave some of those woods in there if possible until the second phase is on its way, just to leave that more of a buffer for a longer period of time.

Council President Buckholtz asked, have you expressed this to Mr. Gatto? Mr. Gatto? The point that Mr. Kinnaird just made, has he expressed that to you about trying to leave as many mature trees there?

Mr. Gatto replied, we did. We actually talked about the one on the corner. We talked about how the parking will go in there. There would be a large enough area there. It's not going to disturb those roots. The southwest corner of your property, the large oak tree, we are going to work around that tree and salvage that tree.

Mr. Kinnaird stated, it was something, I know a lot of times it makes more sense to go in and clear everything. He has to make a way to get drainage in there. But, is there any way to keep any of the trees here until phase two is up.

Mr. Gatto replied, depending on what we are going to be required to do for drainage along the South property line, because that's where we have to work with the city on their screening requirements. We talked about that. Depending on how that water is going to flow and how they determine that and how we tie that in to the retention area, we will work on leaving trees in there. I will work on leaving trees in there. I will work on leaving trees in this area right here and see if we can't move around any type of detention or retention. We will use our best efforts.

Council President Buckholtz asked if there is a handshake. The gentlemen shook hands.

Ms. Calta asked, can I just note for the record that we will mark your appeal as withdrawn Mr. Kinnaird?

Mr. Kinnaird replied, yes.

Ms. Calta replied, thank you. We have obviously heard all of your concerns and they will be taken into consideration. Just one more note if I may. We have a Development Agreement in the works is how I would describe it. So it is being developed, but certain conditions have already been identified for inclusion into that report as detailed by the BZA Minutes and their approval.

Council President Buckholtz thanked the individuals for showing up and working it out.

ANY OTHER MATTERS:

Council President Buckholtz asked if there were any other matters.

Mrs. Cinco wanted to note how the Code Red worked last Sunday. It was very interesting.

Chief Mohr replied, the weather alert went off. Those that had the paging system, it went off. There was a thunderstorm.

ADJOURNMENT

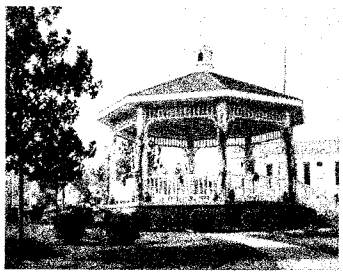
Mrs. Mills, seconded by Mr. Marrie, made a motion to adjourn.

The meeting adjourned at 9:25 p.m. The next Council meeting is scheduled for Monday, June 18, 2012 at 8:00 p.m.

WILLIAM BUCKHOLTZ, COUNCIL PRESIDENT

BRUCE G. RINKER, MAYOR

MARY E. BETSA, CLERK OF COUNCIL



MAYFIELD VILLAGE

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Bruce G. Rinker, Mayor

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AGENDA

SPECIAL MEETING OF COUNCIL
MAYFIELD VILLAGE, OHIO

Monday, June 4, 2012
Immediately Following 8:00 p.m. Mayfield Village Council Caucus
Mayfield Village Civic Hall
6622 Wilson Mills Road, Mayfield Village, Ohio

- **Call to Order**
- **Roll Call**
- **Pledge to Flag**
- **Open Portion - 5-minute limit imposed by Chair. Those who wish to speak must first state their name and address. (The public is requested to limit their discussion to agenda items only.)**
- **Motion to go out to bid for the 2012 Street Striping Program.**
- **Motion to go into Executive Session relative to collective bargaining and imminent litigation.**
- **Formal Council Hearing:**
  - **Appeal filed by Charles Kinnaird from the decision of the Zoning Board of Appeals (BZA Case No. 2012-01).**
    - PRESENTATION OF TESTIMONY –
      (Testimony is limited to 15 minutes from each party)
      Appellant Charles Kinnaird has the right to reserve a portion of his 15 minutes for a final rebuttal if he so chooses.

- OPEN PORTION –
  The public is limited to 5 minutes and are asked to only address Council with information new or different to what has already been testified to at the Board of Zoning Appeals Hearing and/or to note their collective opposition or support on the record.

- QUESTIONS OR COMMENTS BY COUNCIL

- **Any Other Matter Before Council**

- **Adjournment**

BB/mb