

**ORDINANCE REVIEW COMMITTEE
MEETING MINUTES
Mayfield Village
July 14, 2009**

The Ordinance Review Committee met in regular session on Tuesday, July 14, 2009 at 5:00 p.m. at the Mayfield Village Civic Center, Civic Hall. Bill Marquardt presided.

Roll Call: Mr. Bill Marquardt
Mr. Jerry Catalano
Mrs. Mary Ann Wervey
Mr. John Marrelli

Absent: Mr. Wes Marrotte

Also Present: Ms. Diane Calta Assistant Law Director
Mr. Tom Cappello Village Engineer
Ms. Deborah Garbo Secretary

CONSIDERATION OF MEETING MINUTES: **May 12, 2009**

Mr. Marrelli, seconded by Mr. Catalano made a motion to approve the minutes of May 12, 2009 as written.

ROLL CALL

Ayes: All
Nays: None

**Motion Carried
Minutes Approved.**

PROPOSALS

1. Chapter 1371; Soil Removal

- Section 1371.01 Application For Permit
- Section 1371.02 Hearing by Planning Commission
- Section 1371.03 Appeal to Board of Appeals
- Section 1371.04 Appeal to Council
- Section 1371.05 Permit Fee; BOND
- Section 1371.06 Exception
- Section 1371.07 Injunction
- Section 1371.99 Penalty

2. Gas / Oil Well Drilling for Discussion

- Gates Mills legislation
- Areas of permissible regulation
- NEOGAP information / Senator Grendell's proposed revisions
- Revised Mayfield Village Ordinance (DRAFT)

OPEN PORTION

**Chapter 1371
Soil Removal**

Mr. Marquardt called the meeting to order. Does anyone have any comments on the draft?

Mr. Marrelli said 1st paragraph talks about “Any person, firm or corporation desiring to remove top soil, loam, sand, gravel or other substances from land located in any area within the Municipality.....” Do you think we should put in the words “For sale” or “Compensation”? If they’re removing it to put up a building and they’re storing it on site, that’s one thing. If they’re removing it to sell it, that’s something else.

Ms. Calta said section 1371.06 Exception covers that; “This chapter shall not apply to the removal or excavation of any soil or other substance which is only incidental to work or construction authorized under a building permit lawfully issued by the Building Commissioner.....”

- **John suggests incorporating 1371.06 language in the 1st paragraph as opposed to hidden in the back.**
- **Tom said because this is an earth moving operation, we need to add; “A storm water pollution prevention plan prepared in accordance with Chapter 1129; Erosion & Sediment Control”.**

Mr. Marrelli suggests adding;

- **Maintenance of traffic plan / delivery route for traffic control methods.**

Mrs. Wervey said one minor comment, 1st paragraph states “shall first file with the Municipal Engineer and Building Commissioner”. You just file it with the Bldg Commissioner and then you send it to the Engineer for review, correct? John said yes, it always comes through me first.

Mrs. Wervey asked, when can I take that BOND? If he doesn’t finish, do I have to notify him that I’m taking his BOND if it’s not corrected within so many days? I don’t see anything on this. Under what scenario do you enforce?

- **John suggests an enforcement paragraph stating if this, that and the other thing doesn’t happen within “x” amount of days, then the BOND shall be forfeited. Diane, please add forfeiture language; “If violation, 30 days notice, if not, automatic forfeiture of the BOND”. Also add language that we can use BOND money to hire someone else to do the work.**

DECISION

Review changes as discussed at next meeting date Aug 11th.

Discussion

Mr. Marquardt said Ms. Calta will take the lead and do a little history. What we'd like to do today is come away with an action item list of things we can do with perhaps existing legislation or new legislation.

Ms. Calta said I've probably been in on every single oil & gas meeting there's been in the Village in the last 1 ½ years. The idea would be today to come up with an action list of items the Village would like to address as it relates to oil & gas regulations. House Bill 278 amended the State Law on oil & gas drilling in Ohio. That Law pretty much says that municipalities can't regulate oil & gas drilling. Having said that, the next question is, "But what can we do"? I put together a memo that identifies some of the areas that could be addressed.

Ms. Calta said it's tough for me to sit here and say these are the areas that can be addressed because no one has litigated these issues. I can't look to the courts for any sort of guidance. I can look to what HB 278 says and that pretty much says it wants to be a comprehensive plan in the State of Ohio for oil & gas drilling. What we've found over the last few years is that there are issues that are very specific to local municipalities. Municipalities are being required to handle these issues that the State never really thought about.

Oil and Gas Regulation Areas of Permissible Local Regulation

1) Public Roadways

Ms. Calta said HB 278 does allow the Village to regulate roadways. Although we can regulate our roadways, in theory we can regulate them. In practice it really doesn't make a lot of sense. By regulating would be protecting the roadway from damage of vehicles that are servicing the drilling operation. The conversation has been, what kind of vehicles do they use? The size and the weight is really no different than a cement truck.

Mr. Cappello said there might be a little bit of difference. We have to be careful because you would be limiting anybody from doing anything else on that street.

Mrs. Werve asked if it specifically states "protecting" the roadways.

Ms. Calta said I don't think it says protecting, I think it says you can regulate the use of the roadway. The roadway is ours so we can regulate. We don't want to turn it into a toll road but we can regulate it.

Mrs. Werve asked what happens if I say "I will not let you cross the road with a gas line." "I will not let you bore under the road with a gas line."

Ms. Calta said gas line is different than trucks on the road. It talks about traffic. You can't restrict a utility from locating in the right-of-way. A pipe line from Dominion, they are a utility.

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They have the right to access the right-of-way to install their utility. That's separate and apart from HB 278.

Mr. Cappello said how they've done this on Beta is, BASS Energy paid for the installation of the line. The plans were prepared by Dominion. The BID was placed by Dominion. It was all done under Dominion East Ohio Specs. Dominion said; you want us to get your gas, you build us the line first to our specs, you pay for the whole installation then you sell it to us for \$1.00. Ultimately Dominion is the one building the line. They had their Inspector's out there. They're the ones who submitted plans to us. BASS is the one who paid for it.

Mr. Marrelli said back to regulating the public roadway, how do you single out a brine or fracking truck and not have them say "A cement truck or moving van is just as heavy". How do we not single them out?

Ms. Calta said it has to do with enforcement. How do you know who caused the damage? My thought is you have to video that entire stretch of the roadway before and after.

Mr. Marrelli said we don't even regulate house movers, if somebody wanted to pick up a house, put it on a trailer and drive it through town, we don't tell them they can't.

Discussion ensued on weight of various type trucks.

Mr. Marrelli said the question is, can you single them out legally?

Ms. Calta said yes.

Mr. Marrelli asked, they can be required to put up a road damage BOND?

Ms. Calta said yes.

Summary: 1. Mr. Cappello to do a checking on the weight of vehicles to see how practical this is. Mr. Marquardt feels we're doing a stretch on this one. It's not just the weight, it's the distribution of weight that can make a difference.

2) **Income Tax on royalty income**

Ms. Calta said we have an ordinance in place to tax the income on the royalties. I've worked with Ted on coordinating with RITA to identify all of the entities that are involved. When you have a lease, you have your drilling lease and then all of your other properties that comprise the 20 acres. All of those entities get royalties. We've been able to identify everyone in the Village that has a well and is part of a unit to make sure those are being collected. You can see it on their returns. Line item says "Royalty Income".

Summary: 1. Income on royalties is being collected.

3) **Solicitation Ordinance**

Ms. Calta said there's been a lot of issues with what the Landmen represent. We have a solicitation ordinance in place. That requires someone to come in and let us know they'll be going around. The question is, are they really soliciting? Typically a solicitor wants to sell you something. They have a product. Landmen aren't getting you to buy anything. They're trying to buy something from you. It's different. Bill says it's still soliciting a contract. Diane agrees, and an important solicitation. They're not trying to sell you magazines but they're trying to buy rights to your property. I think there's something we can come up with to regulate the Landmen. Whether that means they have to distribute a flier that says "I'm a Landman and I'm soliciting to buy your mineral rights. You should consult an Attorney."

Ms. Calta stated at one point we talked about sample language for a lease. I think that's probably going a step too far. We could have them provide educational materials. The problems I've heard most often with the Landmen is them saying "Your neighbor has signed or the guy across the street has signed. You're the last person to sign." Some tactic or strategy that puts you in a position to think everyone else has signed so why shouldn't you. Mary Ann added "The Village supports this and the Village wants to do this". That's what they said to me.

Mr. Marrelli asked if the Police Dept runs a background check when they issue a solicitation permit. Diane said there are provisions and questions in there about background.

Ms. Calta said I think NEOGAP is trying to come up with a database through MIT that will allow you to actually go to this database and see who has signed on.

Mr. Marrelli said how about if we put language in the solicitation ordinance stating; If they are falsifying or misleading information resulting in people signing leases based on false presentation, we pull their license to solicit. Committee agrees that might be a tough one to enforce.

Ms. Calta said there's a list that the Police Dept maintains, a DO NOT SOLICIT list and a sticker at their front door. When somebody comes in to apply for a solicitation permit, they get that list and they know not to solicit those residents. Jerry has had one of those stickers x 20 years.

- Summary:**
1. Update & print DO NOT SOLICIT stickers for posting.
 2. Add "Landmen" to Solicitation Ordinance.
 3. Law Dept to prepare statement for Landmen distribution.

4) **Aesthetics of the gas and oil well – i.e. landscaping and buffering**

Ms. Calta said ODNR has standards for fencing and landscaping. From a standpoint of analyzing what the Village can do versus what the State Law does, we've always been very comfortable with saying we can regulate the aesthetics. We've had some drillers that have not worked with us at all. Others have been more accommodating. Every property is different.

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Some properties you can buffer things, nobody sees it and it's not an issue. Other properties i.e. Hilton Garden Inn have their tanks in front where they built the huge fortress around it.

Mr. Marquardt asked if we can require they provide a plan for the approval of some Committee.

Ms. Calta said we can. Some will do it and some may not.

Mr. Marrelli recommends they should submit a plan 4 weeks before they intend on drilling and give us a 2 week review time.

Mr. Cappello asked Diane what happens once we pass this ordinance, it's in place and all of a sudden John gets a call "I'm drilling tomorrow". Now what do we do?

Ms. Calta said we're not here to stop drilling. How can we impose regulations? In that instance, we can't stop him from drilling. John asked, can we prosecute him afterward for not pulling a permit? Diane said yes.

Ms. Calta said I've also seen a situation with parking, where parking is going to be affected and they need a variance. John said that's great you got your State permit but now you've screwed up your parking and now you're in violation of the Zoning Code for parking spaces. Now what do we do? Diane said that doesn't mean we shouldn't do something. Something is going to change. John said we could try and take them to court. They could be fined for each day they're in violation. That would probably heat things up because they'd be digging in their pockets. That's where you get the enforcement compliance.

Mr. Marquardt said obviously we'd have to notify all these guys in the first place that this is what we've got here and we expect them to comply with it.

- Summary:**
1. Require a landscaping / buffering plan be submitted to Building Commissioner. Bldg Commissioner will review in house with Service Dept & Engineer.
 2. Embellish the State's standards with some uniformity, i.e. certain kinds of bushes, keeping tank batteries out of front & side yards of residential areas, certain type of fences & certain landscaping.

5) **Existing or new regulatory ordinances, i.e. erosion and sediment control ordinances, water quality ordinances and Fire Prevention Code emergency procedures.**

Mr. Cappello said I recently spoke with Dan Bogoevski from the Ohio EPA. He's in charge of their Stormwater, Phase II, and the NPDES (National Pollution Discharge Elevation System). He stated they basically took away his permit issuing authority. That's as long as they are doing everything on the up and up. If they start doing violations, they can come in after the fact and do something (usually after the fact). I asked him about locally, being we're a Phase II

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community in making them comply. He thought that, and again we have to check with the Attorney General for validity, he feels we can enforce and make them comply with those Ordinances. That's not going to prevent anyone from drilling, it's just making sure they follow our Ordinances.

Mr. Cappello continued, I also spoke with Todd Hauser of the Cuyahoga County Soil and Water Conservation District. He said ONDR'S regulations are probably not as stringent as the newer ones. We need to make sure they apply our newer ordinances / conditions in there. It's just making sure when they disturb the earth that they have a silt fence or sediment traps, seed things & not leave them that way, etc. Those are somewhat covered in ODNR. We have it covered in Section 1179.05 (i).

Ms. Calta reiterated again, we are not prohibiting something, we are just regulating. I did do a draft letter to the Attorney General. You have the Erosion & Sediment Control requirements that come from the Federal Clean Water Act out of the EPA and now they are mandated to be enforced by the local communities. We're doing that through our local ordinances. But yet, if we're not allowed to enforce them because of HB 278, there appears to be a conflict. So by asking for an opinion from the Attorney General, they can then look at the issue. I think the end result is ultimately that we're going to be required to enforce these.

Ms. Calta said Gates Mills is trying to do this through their Fire Prevention Code. Tom said theirs doesn't look too restrictive, although it says their Fire Chief has ultimate authority to shut the well down which is something we don't have in our Code.

Ms. Calta said I think these are all good ideas. When push comes to shove and these things are enforced, are they going to comply? Time will tell. Do I think from a legal standpoint you can enforce these sort of things? I do. I think they go to the heart of Home Rule and the ability to regulate for the health, safety and welfare of the municipality. I think we're on good solid ground with these. I will have our Fire Chief review the parts that are enforceable by the Fire Dept. for additional comment. I can tell you when our office was evacuated last week in Mayfield Hts when the well behind us started spewing, in watching the whole thing, it did not look extremely coordinated because Fire & Police could not do anything. It was a huge hissing noise. It was so loud we had to close our windows because we couldn't hear the phones. Nobody had the ability to shut off the well nor did anybody want to. It didn't appear to me that anybody was trained to shut it off. It stopped in 25 – 30 minutes then started spewing oil.

Mr. Marrelli asked about Fire training.

Ms. Calta has heard that a lot of drillers offer training to first responders for free. I think the Chief would have to weigh in on his opinion. I see pros and cons to it. I don't want anybody to be responsible for somebody else's well. Training can't be a bad thing even if it's never used. Both Police Dept & Fire Department respond. So how much should Police be involved?

Ms. Calta brings up another point. What is the cost to respond? When we respond to these emergencies, should we be putting together an ordinance that covers the cost for responding?

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Mr. Marquardt suggested speaking to Chief Mohr assuming he's had conversations with other Fire Departments. John said there's an ordinance in place already if they respond to a hazardous material spill, they can ask for payment. Bill recommends maybe referencing that.

- Summary:**
1. Letter to be sent by Law Dept to Ohio Attorney General for opinion as discussed.
 2. Opinion from Fire Chief on emergency procedures.

6) Zoning – such as requiring a conditional use permit for wells located in residential districts since their operation could be considered a commercial operation.

Ms. Calta said I looked at zoning because I think there's a very good argument to say when you have a well on your residential property, it's a commercial operation. It's not a residential use. We regulate so many things on residential property. We're not doing anything differently if we said this is not a permitted use in a residential district and it requires a conditional use permit. At that point we then interject notifications and disclosures.

Mr. Marquardt said I don't think we can issue a conditional use permit in a residential district. John said but you can get a variance from the zoning code.

Ms. Calta said this could be the test case. You go down that path with caution because you have to live with the results.

- Summary:**
1. Require a Conditional Use Permit for drilling in Residential Districts.

CONCLUSION

Ms. Calta said one other idea is, and I haven't looked into this, we keep focusing on the drillers, what about the property owner? Should the owner be required to provide proof of insurance?

Mr. Marrelli said that would leave it up to two people being responsible as opposed to one. If the well company goes belly up, we could go back to the owner of the property to handle the situation.

Mrs. Wervev said if they were smart, anything you required of them, they would put back on to the person they sign the lease with so you're never out of pocket.

7) Compliance of Owner of Property to issue proof of Insurance.

Ms. Calta said in summary, I'm working on this, the Attorney General's opinion and keeping tabs on what Senator Grendell is doing. He's trying to introduce changes to the State Law which would give more control to the local municipalities. We don't know what if anything will happen to it. He represented at the Council meeting that something would be introduced

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hopefully by September. There's his bill and Senator Niehauser's bill which is more backed by the Oil & Gas Association. Highland Hts just had a law suit. I don't know if anyone heard there was just a decision. Highland Hts entered into a lease agreement then backed out of it. Then they passed a Charter Amendment that requires any municipal land that would be leased for commercial purposes be voted on by the electoral. The way the court analyzed it, the lease was entered into before that. They kept it separate and looked at it contractually. The lease is required that the matter be arbitrated or mediated and that didn't happen. The City was required to identify 3 locations where the wells could go. The City never identified the 3 locations because they couldn't agree where the locations would be. It looks to me they'll be forced to have those wells drilled. I'm sure there's a lot more that will happen with that case.

- **Mayfield Village proposed Wells status**

Ms. Calta said as far as what's going on in the Village, the most recent news was they're going to drill this summer on Bonnieview. Beech Hill doesn't sound like they have the 20 acres or the 20 acres by Wanda Hejcl either. I haven't heard anything new on Beta.

ADJOURNMENT

Mr. Marquardt said if there are no additional questions or comments, I'd like to hear a motion for adjournment. Mr. Catalano, seconded by Mrs. Wervey made a motion to adjourn the meeting.

ROLL CALL

Ayes: All

Nays: None

Motion Carried

Meeting adjourned at 6:25 p.m.

Respectfully Submitted,

Deborah Garbo
Executive Assistant
Building Department

cc: Jean Triner
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