

**ORDINANCE REVIEW COMMITTEE
MEETING MINUTES
Mayfield Village
January 11, 2011**

The Ordinance Review Committee met in regular session on Tuesday, January 11, 2011 at 5:20 p.m. at the Mayfield Village Civic Center, Main Conference Room. Chairman Joseph Saponaro presided.

ROLL CALL

Present: Mr. Joseph Saponaro Chairman
Mrs. Mary Ann Wervey
Mr. John Marrelli Building Commissioner

Absent: Mr. Jerry Catalano
Mr. Casey Kucharson
Mr. Bill Marquardt Council Alternate
Mr. Tom Cappello Engineer Department

Also Present: Ms. Diane Calta Law Department
Ms. Deborah Garbo Secretary

CONSIDERATION OF MEETING MINUTES: December 14, 2010

Mrs. Wervey, seconded by Mr. Marrelli made a motion to approve the minutes of Dec 14, 2010.

ROLL CALL

Ayes: All **Motion Carried**
Nays: None **Minutes Approved As Written.**

PROPOSALS

- 1. Zoning Standards for Wind Turbines**
- 2. Golf Carts (Licensing & Insurance)**
- 3. Section 1157.06; Accessory Uses
(HOLD Pending BOA Case #2010-02)**

OPEN PORTION

Chairman Saponaro called the meeting to order. Housekeeping wise, Mary Ann, John & I will be sworn in Tuesday at the regular meeting of Council. Mary Ann OOT on 1/18 but will attend Caucus on Feb 7th.

Zoning Standards for Wind Turbines

Chairman states everyone should have received the 'Wind Energy Facilities' Draft.

Mr. Marrelli said I went through 5 various city ordinances and threw 2 out I didn't like. I pulled out definitions I thought were appropriate. I liked the idea that just about all the cities require a Special Use Permit for a turbine, not by right or by zoning. I highlighted 3 documents and the Law Department put it together in a cohesive document. Changes need to be made such as Pg #4 'Planning Coordinator' will change. I'll go through this and I'd like everyone to take a look at it to see how it can really work. Be advised the Zoning Districts are basically the business districts which is the Beta area; Office/Lab, Production/Distribution & Motorist/Service.

Chairman receives text from Casey, stuck in the snow storm, will not make the meeting.

Mrs. Wervey asked if it would include Progressive.

Mr. Marrelli said it would. A relevant thing you might be interested in is there's a rooftop provision pg #6 (f) Height. John uses the Holiday Inn as a possible example.

- **Changes:**

(e) Setbacks for Ground-Mounted Wind Turbines..... Call this 'Height & Setbacks for Ground-Mounted Wind Turbines' and include the 1st sentence of (f) as a separate line at the bottom of it.

(f) Height.....Call this 'Roof-Mounted'.

Mrs. Wervey asked if anyone has seen a roof-mounted anywhere.

Mr. Marrelli replied only on the internet.

Chairman asked Mary Ann if any of the Zaremba properties have roof-mounted or ground-mounted turbines.

Mrs. Wervey replied none. I've seen them in my travels in Western New York in the fields. Farmers are putting them up in multiple.

Ms. Calta states there's one at University Circle, coming up Carnegie looking left. It's buried behind buildings back there. I don't think it's roof-mounted, but it could be.

Chairman comments they're going to become more and more part of the landscape you don't see.

Mr. Marrelli agreed, like microwave / phone towers. When they first came out people went crazy. Now you have to look for them.

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Chairman asked John what city ordinances he worked with.

Mr. Marrelli said Avon, Cleveland & Olmsted Township.

Mrs. Wervey asked John why he didn't like Lakewood's.

Mr. Marrelli replied Lakewood only allows them in areas along the highway and none of their districts made any sense to me.

Next Steps

- 1. Members to review draft and forward comments to John or Diane.**
- 2. Keep on agenda as working document until Ordinance developed.**

Golf Carts (Licensing & Insurance)

Ms. Calta said our Insurance Carrier (Wichert Ins) insures 200 different municipalities in the State. Jay Hutchison looked at it from the standpoint of municipalities and the claims they might see from golf carts. They also sell other insurance, they don't insure just municipalities. He looked at that and said they do have a packet for golf carts. If you have a golf course and have carts, you have to insure that. They want to make sure those carts don't get on the roads. As part of that insurance package he says they make sure people have barriers & procedures in place so those carts can't be taken out.

Chairman asked from the Village's perspective. What if someone is on the road that shouldn't be or on Village property and causes damage. Who is going to be responsible for that? Since they are not licensed and don't have insurance on the vehicle, does it follow under the Homeowners Insurance? Who do you go after kind of thing?

Mr. Marrelli asked, if you're in the car that the golf cart pulls out in front of and you mess up your car and the guy's golf cart, do you just lose, are you out?

Chairman said you should be able to go after the person, do a claim against the Homeowners policy of some sort.

Ms. Calta feels she keeps bumping up against the wall with this. Jerry thinks there's an issue but the Chief doesn't.

Chairman talked to the Chief yesterday. I asked him how many instances he is seeing with golf carts. He said they don't see any and it's not an issue. He said there's a golf cart on SOM but it goes between two Brothers houses on private property. If there's an issue with it, it's dealt with privately. He told Jerry if he sees the carts, call the Police Dept and they can do something about it. Chief doesn't have an issue with golf carts.

Mr. Marrelli said we don't want to write a law for one golf cart.

Chairman defers to Diane but states we have laws in place. If there's a golf cart on the road that's an unlicensed vehicle, it doesn't mean it's exonerated from all laws. It may be in violation of the licensing and registration aspect of it, but it's like the guy who gets intoxicated and drives his lawn mower down the street. It doesn't have a license, but you're under the influence on a vehicle. Chief's opinion is we are very much covered when it comes to golf carts. I said it's not about if we have a law that covers them or not, it's really about the licensing, the insurance issue, the liability aspect of it. That's the only piece I don't know for sure. Are we as a Village exposed? I can't imagine we are. I think what would be good at this point to deal with the licensing issue is to get an opinion from the legal department that:

- 1) The golf carts are covered in terms of licensing, insurance & liability.
- 2) Motorized vehicles are / are not permitted on our multi-purpose trails & paths.

Ms. Calta not sure but will double check into what we have on the books to clarify operation of vehicles on our trails. We had the reverse situation with somebody that was riding a bike and we wanted them to go on the path and they said no because it meanders and goes up and down, stating "I'm on my bicycle and I have a right to be on the road". It does say they have a right to be on the road as long as the bike has all the safety equipment, the lights, etc.

Chairman Saponaro said we don't govern the Metro Parks so they can allow or not allow it. We don't supersede that.

Mr. Marrelli added that most Parks have signs at any given roadway; "No Motorized Vehicles". Snow mobile tracks tear up the asphalt and you don't want the 4-wheelers running people over walking their pets.

Next Steps

- 1. Opinion from Law Dept that golf carts are covered on the books.**
- 2. Law Dept to check on the use of Motorized Vehicles on the Trail System.**

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Section 1157.06; Accessory Uses

- **BOA Case #2010-02 (Hamill / Scasny)**

Chairman Saponaro asked who is taking the lead on when the hearing for BOA Case #2010-02 will be held.

Mr. Marrelli said Council President Buckholtz stated it will be addressed in February.

Ms. Calta added that's correct. He wanted to get through January's organizational meeting and appointments.

Chairman asked Diane, what's the reality of saying to someone who has violated and built something that it needs to be removed now? Is there case law on that?

Ms. Calta replied case law tells you that you can tell someone to take it down. Reality is, does it happen? Yes it happens, but not very often.

Chairman said the unfortunate thing is it's a lose lose situation on all sides. No one is going to walk away happy. At this Committee's level, we'll look at it from an Ordinance review perspective and say "Listen, the Ordinance is there in place. We grant variances on occasions, if it's approved, great. If not, you can't do it". I think we have to be very cognizant on this one. From my perspective, I'm not looking to make homeowners have to take buildings down. By the same token, I think there's enough of that type of thought process that permeates so many municipalities anyway; well, he cried enough, so he's allowed to keep his. Another problem is somebody that comes into the Village, looks for a piece of property, sees that and say's, "Oh good, we're allowed to do that". Reality is, you have to perform due diligence. We around this table may perform due diligence, but everybody else doesn't think about that. If they see it, they think it's o.k. This matter is a big deal here. It's not about picking sides. They both have good points. Personalities aside, did you violate the Ordinance? If you did, what's the remedy? The remedy is that you have to take it down to this level. Diane, if someone doesn't like the way Council goes, what is the appeal process?

Ms. Calta replied appeal is filed to the County Court, Common Pleas. It would have to be filed within 30 days of the decision. It gets set for a briefing. You can go up from there but I think the likelihood of a reversal of an Administration appeal at the Court of Appeals level, your percentages tend to get smaller and smaller.

Mrs. Wervey said if you leave the community thinking that it's an o.k. use, then it should be o.k. for everyone. You should change the Ordinance to make it an o.k. use for all of us. It's a difficult matter.

Chairman Saponaro said my opinion is a hearing is always a good thing. Let people speak and present their case. Allow them due process. Mr. Marrelli agrees.

Ms. Calta added, I would normally agree with you but having sat through the BZA meeting and talking to Joe Diemert, his reaction was he doesn't see the need for a hearing. You have the record from the BZA. Maybe you should open the hearing to add to (supplement) the BZA, but limit it, not that the decision should be based on how long the meeting will last, but you want to look at the big picture. My opinion is you don't want to have a whole new hearing.

Chairman Saponaro asked, when it goes to Council it doesn't start brand new, correct?

Ms. Calta said correct, because you don't have to have a hearing at the Council level, you can just review the record that has already been established and make a decision.

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Chairman said from that perspective, knowing there's a record already in place, I think we should assemble a package for this Committee so that we can weigh in on it what we think in terms of the Ordinance and make a recommendation. Your point is well taken, I agree, you don't get three bites of the apple. If it's something new you bring, I have no issue with that.

Ms. Calta said I would hope that Bill would allow each side to make a statement arguing their position as to how they look at the case and what they would want Council to do at the very minimum, hearing or no hearing.

Chairman said I think that's good, and I think we need to limit that. I'd like to have a packet of all the documented evidence that has transpired for our Feb 8th meeting. We'll review and discuss it and move it over to Council so that Council can hear from us as well.

Mr. Marrelli said that's fine. Debbie & I will put the building department record together.

Mrs. Wervey asked for clarification on what Council will be ruling on.

Ms. Calta said the BZA made a ruling. Council will make a decision on that ruling. They will agree with it, disagree with it, or modify it. You have three things here. They came to BZA and requested a variance. The variance was denied. The other issue is he submitted plans and what he built did not conform to those plans. The BZA on that note accepted his as-built plans to conform.....

Mr. Marrelli took explanation from here; they accepted his plans, basically bypassing the Architectural Review Board. They said the as-built plans are now going to be accepted as the structure and let the record reflect that this structure is o.k. but the other structure has to be removed (the wood shed). That building (garage) in itself meets the size requirements. The two together are over the limit. The compromise was to take down the shed he keeps the wood in and move the wood into the garage. That way, he can't have parties in there, watch TV. and make popcorn because it's full of wood.

Chairman Saponaro asked what he wants the garage to be used for, a clubhouse?

Mr. Marrelli replied, pretty much.

Ms. Calta said you start going down that slippery slope. The discussion was a garage is for storage. Do you store something in there? Yes, my tractor. Do you need plumbing in your garage? Sure, some garages have plumbing for bathrooms. What about electricity? Sure, a lot of garages have electricity. BZA was trying to distinguish a garage from a dwelling.

Mr. Marrelli added there's a difference when you take one piece a time. The generator is for his house but he also can pull power off it for his garage/cottage. He has gas back there, a furnace. Some people have heat in their garage. You ask, is it illegal to have heat in your garage? The answer is no.

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Ms. Calta said you try and control the size of an accessory building because typically the smaller the size, the less chance of a dwelling. You try and limit to one story. If you have a permanent staircase to go upstairs, you're getting into a dwelling if it's two stories. But it's o.k. to have pull-down stairs.

Chairman Saponaro asked, did BZA say on the record it can not be used as a dwelling unit?

Ms. Calta said yes.

Mr. Marrelli added, not to be lived in, not to be slept in.

Chairman asked Diane if there are any cases in other municipalities that could help us in this scenario.

Ms. Calta said they aren't going to be based on our code, i.e. Cleveland Hts has carriage houses.

Mr. Marrelli asked how Cleveland Hts would handle a garage being converted into a carriage house.

Ms. Calta replied carriage houses are grandfathered.

Chairman said there has to be a case out there that's dealt with this issue distinguishing a garage for garage purposes vs. a dwelling unit for dwelling unit purposes. The water's muddy at best. Just because you have electricity and plumbing doesn't mean you can live in it. There's a warehouse on Beta that has all of that in it, but you can't live in there. The problem is the zoning makes it distinguishable and the building code. I think that's where we have to draw the attention back to. In a different community, that may be perfectly normal and it can be a dwelling unit. However, you're zoned single family residential, here's what your zoning requirements are, here's what your building code restrictions are. No matter what you're selling here, it's not legal, it's not proper.

Mr. Marrelli agrees. That's why it's on our Ordinance Review agenda, to try to determine at some point in time how we're going to describe and draw the line so we don't have accessory buildings like cabana's anymore.

Chairman Saponaro said enforcement is nearly impossible when you start picking what items are allowed and not allowed in the structure. We have to clean that language up. From my perspective, we start with the zoning piece of it. If it's single family zoning, it's single family. Out buildings are not dwelling units, period. The heart felt emotional part of it; it is what it is. Everyone can feel sympathy for everyone's lot. Unfortunately it's not about that.

Mrs. Wervey said it's about single family zoning. If your neighbor built something and all of a sudden it became a two-family dwelling, you might not be so happy about it.

Mr. Marrelli said we had a situation on Lander Rd. where somebody had a pool in their backyard. They built a pool house which looked like a little doll house. It had in it the filters, bags of sand and supplies for the pool. That was all fine. They moved. I believe they lost the property. The pool became green and ducks started coming around. The Village on their dime had to demolish it and assess their taxes. It was a nuisance. Years go by and somebody finally buys the place. Doesn't the teenage daughter decide she's going to take up residence in this little doll house in the back. There's now a stove, refrigerator and a bed. It lights on fire. She almost dies. And who ever knew anybody was living back there. If the Fire Dept gets called out, they're coming to the house, not the doll house.

Chairman Saponaro said in terms of essential services like Police & Fire. If there's a fire to an out building, does fire cover every building on your property, is there a distinction?

Ms. Calta said it'll cover everything on your property but if they get the call for that location, if they're not aware there's another building (an out building), it just presents a more dangerous situation.

Mr. Marrelli said if you're an Emergency Responder and somebody says there's a shed on fire, you get there and you put it out. You're not supposed to think there's somebody in there.

Ms. Calta added it also puts the first Responders in a very dangerous situation because that structure was not built as a habitable dwelling. It was built as a shed for equipment. That may be something they might not necessarily want to enter.

Chairman Saponaro asked if we have photos of the interior of Mr. Scasny's building, if not, can we ask for them?

Mr. Marrelli said Mr. Scasny invited everyone out to see his structures. We have exterior photos, but not interior. I'll request interior photos.

Next Steps

- 1. Record of proceedings to Ordinance Review Committee for review.**
- 2. Request interior photos of garage from Mr. Scasny.**
- 3. Law Dept to research any case law that would be instructive.**

ADJOURNMENT

There being no further business, Mr. Marrelli, seconded by Mrs. Wervey made a motion for adjournment. Meeting adjourned at 6:10 p.m.

Respectfully Submitted,

Deborah Garbo
Executive Assistant
Building Department