

**ORDINANCE REVIEW COMMITTEE
MEETING MINUTES
Mayfield Village
February 8, 2011**

The Ordinance Review Committee met in regular session on Tuesday, Feb 8, 2011 at 5:00 p.m. at the Mayfield Village Civic Center, Main Conference Room. Chairman Joseph Saponaro presided.

ROLL CALL

Present: Mr. Joseph Saponaro Chairman
Mr. Jerry Catalano
Mrs. Mary Ann Wervey (Left mtg @ 6:05 p.m.)
Mr. Casey Kucharson
Mr. John Marrelli Building Commissioner

Absent: Mr. Bill Marquardt Council Alternate

Also Present: Ms. Diane Calta Law Department
Mr. Tom Cappello Engineer Department
Ms. Deborah Garbo Secretary

Michael Girbino Fire Marshall

CONSIDERATION OF MEETING MINUTES: **January 11, 2011**

Mr. Catalano, seconded by Mrs. Wervey made a motion to approve the minutes of Jan 11, 2011.

ROLL CALL

Ayes: All

Motion Carried

Nays: None

Minutes Approved As Written.

PROPOSALS

1. **Review Draft Zoning Standards for Wind Turbines**
2. **Discussion Golf Carts (Licensing & Insurance)**
3. **Discussion Section 1157.06; Accessory Uses
(Review & Recommendation Pending BOA Case #2010-02)**
4. **Chapter 1128; Comprehensive Storm Water Management
Chapter 1129; Erosion and Sediment Controls**
5. **Presentation by Fire Marshall Girbino; Photoelectric Smoke Alarms**

ORGANIZATIONAL

Election of Chairman

Chairman Saponaro opened the floor for a nomination for Chairman of the Ordinance Review Committee 2011 nominations.

Mrs. Wervey, seconded by Mr. Catalano made the motion to nominate Joseph Saponaro.

The nominations were closed.

Chairman Saponaro opened the floor to a motion for the nomination of Joseph Saponaro.

Mr. Marrelli, seconded by Mr. Kucharson made the motion to approve the nomination for Joseph Saponaro.

Joseph Saponaro asked for a Roll Call on the nomination.

ROLL CALL:

Ayes: All

Motion Carried

Nays: None

Joseph Saponaro to serve as 2011 Chairman.

OATH OF OFFICE

Chairman Saponaro administered the Oath of Office to Mary Ann Wervey as a member of the Ordinance Review Committee.

OPEN PORTION

Chairman Saponaro called the meeting to order. John asked for a change of order in agenda items. We begin with golf carts.

Golf Carts

Chairman Saponaro said we've discussed this. We went to legal with questions on anything we need to be doing in terms of registration, licensing & insurance. We received an opinion letter from our Legal Dept dated Jan 28th and revised Jan 25th. Does anyone have any questions re the contents of the letter? Recapping the letter, we are covered.

Mr. Catalano said I'd like to see it enforced. Did you speak to the Chief?

Chairman replied I did. Chief states his Officers have not reported seeing them. Most people have seen them on private property.

Ms. Calta advised Jerry to call the Police when he sees them and have them file a report.

Mr. Catalano said you have them underage on the SOM bike path, on Hickory Hill and at the Apartment complex on the sidewalk.

Mr. Kucharson added, they're maintenance people for the condo complex.

Mr. Catalano said they are supposed to be State licensed and driven on the road. The reason I'm so emphatic about this particular item is I could see the kids get hurt.

Chairman said I understand. We need the calls to be made to the Police Dept to create a report. I had the Chief research how many calls / incidences he's had on golf carts. He's had none. So please call the Police when you see them.

DECISION

Mr. Marrelli, seconded by Mr. Kucharson made a motion that since golf cart licensing and insurance is covered in our Ordinances we can take Golf Cart topic off future agendas.

ROLL CALL

Ayes: All

Nays: None

Motion Carried

No additional legislation required.



Wind Turbines

Mr. Marrelli said we received everyone's comments. Diane put together a draft.

Ms. Calta incorporated everyone's comments, didn't get Casey's in.

Mr. Marrelli points out the zoning districts where turbines could be allowed, basically from Wilson Mills the commercial district along the freeway all the way up to White Rd as long as there's more than one (1) acre of land and all the setbacks can be met, nothing in the residential area, just the commercial district and nothing in the front yard. There's no height limit except how close it is to power lines or occupied buildings. Casey added the shadow flicker will dictate height.

Mr. Marrelli said my best guess is if one shows up somewhere, it might be at PRG Campus 11. They have the best set up for that, having the proximity to high tension lines and their own substation. It's a no brainer for them. It's allowed by Special Use Permit. Someone could try in a residential district but I don't know how they'd meet the requirements. We'll have to add this to the Special Use section in our zoning code where it outlines the different uses.

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Chairman suggests in looking @ Campus 1, adding something along the lines that if the zoning borders residential on 2 or more sides, that area's not allowed, something to protect the residential.

Mr. Marrelli said it would be up to the Planning Commission to approve it. They'll have to take into consideration the thing will be turning in the middle of the night and there'll be noise.

Discussion ensued which areas would not come into play.

Chairman's suggestion is limit it to the NW Quadrant.

Mr. Marrelli said we could say in the Motorist/Service, Production/Distribution & Office/Lab. Another thing I thought of is with the gas wells, the State allows multiple property owners to agree with each other and build a unit. Do we want to consider that for a turbine? What if Preformed Line Products who has that wooded area wanted to put one in and the neighbor next door wanted to be part of that, invest in that?

Chairman doesn't think aggregating the property is an issue.

Mr. Kucharson said I think this was contemplated because we have a definition in here for Non-participating Landowner.

Mr. Marrelli said that's somebody saying you have the property, I have the money to put it in, so let's make a deal.

Mr. Kucharson stated I don't see any reason why we should prevent someone who has the property size from putting in a turbine to not only service their own property, but also adjacent property, more like a business venture.

Mr. Marrelli replied you're right because they're pretty expensive. You'll likely need help on that, as long as they meet requirements. Let's leave it as is and see how things play out. It's a Special Use Permit and can be altered.

Pg #6 (e) (2) No wind energy facility shall be erected on any parcel that is less than one (1) acre in size.

- Discussion ensued if the (1) acre in size is big enough. A square acre lot is 200 x 200, just shy on an acre. Getting anything built on there of any kind of height is not likely.

Pg #6 (e) Height and setbacks of Ground-Mounted Wind Turbines; A ground mounted wind turbine shall be set back from all property lines, street right-of-way lines, and overhead utility lines a minimum distance equal to 1.1 times the height of the wind turbine.

- Tom states if the turbine is 200' tall, it has to be 220' away from the property line, that's 4 acres.
- Chairman asked John where the 1.1 came from. John said the City of Cleveland ordinance. The other ordinances were specific in height, i.e. 180', 200' or 220'. I didn't

want to be locked into a height. Otherwise it's arbitrary. It's a safety issue. If the thing should collapse, there will be nothing within 110% of the height.

- Chairman concerned about falling but also concerned about the debris that moves. The 1.1 is a minimum. John said it could be more. The Planning Commission has the ability to determine it can be more.
- Diane asked, should the setback run from the nearest occupied building or from the property line? John replied both.

Fire Marshall Girbino arrives to meeting.

Pg #8 .12 Decommissioning

- John said this was the part we were hung up on last time on how to get the money set up in case they go belly-up and we have to take it down.
- Chairman used Direct TV as an example "I don't like your service. That's fine, send us everything back. When are you going to come get the satellite? Oh, we don't take that back. Why? You may want us back. I don't want you back, come get your satellite."
- Chairman added, the same thing ODNR went through with abandoned wells.
- It may be too cost prohibitive if a company goes under, for them to come back and take it down, sell it, or do whatever.
- John said we have to make sure whatever collateral i.e. Performance Bond they put up that it can't expire.
- Tom said being a Special Use Permit, I don't know what a bonding company will do with that.
- Casey asked about turbine financing. I worry about a guy who wants to put a turbine on his property, goes to PNC Bank, and gets a loan. Somehow they take a lien on the turbine. Whoever is the mortgage holder on that property would then be entitled to priority on that. We could get into a payment issue with the banker, or if whoever financed the construction hasn't been paid, we're going to get into a priority battle on who is first in line at getting paid. If this is going to get decommissioned, if we say we put money in, even if it's a Bond it's a good idea, but if you put it into escrow, it's still cash of, and if whoever finances it files a general UCC or a mortgage, they're entitled to that money prior to us. I don't know how we'd go to that. A Bond issued to us would be different.
- Diane said you still have to make a claim on the Bond. There's language in one of the ordinances about 'Decommissioning Funds'. They actually have a fund for this money. I don't know how much it costs to decommission a wind turbine. Their Engineer is supposed to provide that estimate to us; **pg #9 (e)** after the first year of operation and every third year thereafter.
- Tom talks of the cost of bringing in a crane & crew which isn't cheap.
- Chairman recommends a decommissioning plan on the onset prior to construction.
- Tom said the turbine could be up for 20 years. Twenty years from now the cost to decommission could be double from today.
- Discussion ensued on timing of decommissioning plan submission, escrow & bonds.

Pg #3 Submission Requirements

(G.) Documents related to decommissioning

- Diane said we'll call this "Decommissioning Plan & Estimate".
- Casey suggests put not only the property owner on the hook, but the turbine operator on the hook as well to decommission.
- Joe said to put the operator on the hook, you have a licensing requirement, then you set forth what they're required to have in order to be an operator in good standing. You're tying it back into a licensing mechanism.
- Discussion on tax to the Village on revenue generated. It is income generated.
- John said we need a warranty, guarantee, bond, some Insurance Co. to say they'll take care of everything if this thing goes belly-up.
- Diane said we have a process in the code to correct a nuisance. Village corrects the nuisance, they get cited and it goes on their tax duplicate.

Pg #4 Elevation Drawings

- Mary Ann said number (2.) you're saying what you already said in (1.).
- Mary Ann asked, what are trying to say in (3.), what are you requesting on elevation drawings?
- John replied, I imagine in my mind standing in Highland Hts looking across the freeway and a big propeller against a building in the background. **To clarify; I want to see an elevation of what that looks like, elevation views each direction (4 views), not elevation of the site.**

Mr. Catalano makes final comment, when I was on Block Island East Coast 1981 the entire Island was covered with turbines, like a big farm. They were supplying power to other Islands under the ocean.

Next Steps

Law Dept to incorporate comments per discussion. Review draft next mtg.



Photoelectric Smoke Alarms

Mr. Marrelli introduced Lt. Mike Girbino.

Lt. Girbino said there're two sensing technologies that the devices utilize; photoelectric & ionization, lot of studies done over the years on both. This has become a hot topic. The most common type of smoke detector in homes today is the ionization type. They're inexpensive and readily available for years. They're battery powered. These devices utilize the technology that senses invisible products of combustion. These invisible products of combustion are usually prevalent in fires that spread rapidly and produce large amounts of heat, but not a lot of smoke. These are fires we saw 40 years ago with the materials we had in our homes, i.e. natural fibers.

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Today we have mostly synthetics. The fires we're seeing in homes that are killing people are involving synthetic & hydrocarbon based material that burn slowly and generate large quantities of smoke. The photoelectric detectors work much better in these types of fires. It's been shown the ionization detectors are slow to respond in these types of fires and in some cases don't respond at all.

Mr. Marrelli said our smoke detector ordinance is from 1975. It allows you to hang a smoke detector with a cord on it and plug it into an outlet. That's how old it is. The standards we have has never been changed, it's time to change. Our Ohio Bldg Residential Code covers smoke detectors and where they're supposed to be but doesn't tell you what kind.

Smoke Alarm Video Presentation

Following video Mr. Marrelli states both Bldg & Fire will push hard to get the photoelectric smoke detector word out. I want to delete our existing ordinance, adopt the State Code and amend that to specify photoelectric smoke detectors. City of Shaker Hts & Chagrin Falls have already gone down this road.

Mr. Cappello asked about the elderly that still have 30 yr old furniture in their homes. Is the photoelectric just as good as the ionization? Are they still making both?

Lt Girbino, great question. Photoelectric is better. This video is a few months old and very recently BRK First Alert announced they are no longer going to make duo sensor detectors. There's been controversy surrounding the duo sensor devices as well, allegations that the manufacturers have tweaked the sensitivity of one sensor or the other to composite for installation in different areas that respond to false alarms like kitchens and baths, they might be reducing the effectiveness of one sensor over the other. Right now they are still making both, but I think you're going to see ionization detectors disappear. The photoelectric detectors respond consistently and quickly in all types of fires.

Mr. Cappello said that explains the night my wife burned the soup pot and the smoke alarm didn't go off. Would the photoelectric type gone off? Lt. said yes.

Mr. Marrelli suggested to Google photoelectric smoke detectors for information. Lt. added the Fire Dept's web page on the Village's website has links to a lot of information.

Chairman Saponaro asked if we'll be looking at radon and other detectors with the ordinance.

Mr. Marrelli said no. This is strictly smoke detectors. Our ordinance addresses new homes and additions. I want to make sure somebody that puts the addition on that they don't go to Home Depot for the \$5 ionization smoke detector and think they're safe.

Lt Girbino said cost gap is narrowing. You can purchase a pair of First Alert photoelectric detectors at Costco for around \$21. Ionization you can still buy for \$5 or \$6. The smoke detectors we distribute now from the Fire Dept that we received on a Federal Grant with funds from FEMA are photoelectric with 10 yr lithium batteries.

Chairman stated Fire Prevention month is October. Is the message going to come out from your industry endorsing the photoelectric? Lt. said yes.

Mr. Catalano said to include an article in the VOV.

Mrs. Wervev asked if we can purchase the photoelectric @ Home Depot.

Lt. Girbino replied yes, but their selection isn't as good. Walmart and Costco have a better selection. If you really want to go crazy, you can purchase the wireless interconnected photoelectric smoke detector so when one goes off, they all go off. If you want additional protection in an existing home without doing any wiring, you can get it. They work very well and some of them even talk. Studies have shown people respond to voice better than an alarm. You can buy them on Amazon for about \$35 /piece.

Mr. Catalano asked if CO2 detectors go bad.

Lt. Girbino said yes. They have a 5 – 7 year life span.

The Committee thanked Lt. Girbino for the presentation. Lt. thanked the Committee for their time.

Next Steps

Fire & Bldg Dept to work together on Code language change.
Review Draft next mtg.



Storm Water Management Ordinance

Mr. Cappello said this recommended draft reflects the required changes to our current code due to the changes to Ohio EPA's post-construction storm water requirements in Ohio EPA Permit effective April 21, 2008. The 2008 permit expires in 2013. We have to be compliant by June 2011. It's mostly updated criteria.

Next Steps

Tom Cappello to work with Law Dept to incorporate updates.
Review Draft next mtg.



**Section 1157.06; Accessory Uses
Review Pending BOA Case #2010-02**

Chairman Saponaro said everyone received a packet of the record of proceedings from the Hamill / Scasny Board of Appeals case and the interior photos of the garage & woodshed the Committee requested.

Mr. Marrelli's theory is when the firewood's all gone for the year, all the stuff that's stored in the out building goes into the firewood building and it's a playhouse again. Committee suspects the theory is correct.

Mary Ann Wervey leaves the meeting @ 6:05 p.m.

Mr. Catalano recommends we limit one utility in a facility of this nature, electricity only.

Mr. Marrelli has gone through other city ordinances. Nobody has gone down the road when it comes to the 'accessory buildings' definition to say you can't have electric, water, etc. They say:

"Accessory structures in residential zones shall not contain or be used as dwelling units, home occupations, or for commercial or industrial purposes".

Mr. Kucharson doesn't think it's going to make a difference. Mr. Scasny could say it's not primarily used as any of these. It's primary use is a storage shed and I decided to put a TV in there.

Mr. Marrelli said you can't legislate what somebody is going to do in their own house or backyard unless you legislate everybody, i.e. nobody in town can have heat or water in their garage.

Ms. Calta goes back to the beginning. How this occurred is why there's a problem. He came in and pulled a permit for 272 sq. ft. He didn't come in for a permit for what we're looking at today. This is a good example of what we don't want to happen. We want to make sure it's written so it doesn't happen again. Not to forget that we do have the ordinances in place that if somebody came in with a request for an accessory garage that it would not go to the extent that this did. Unfortunately I don't think limiting the utilities is the answer. The concept is when you build a garage, you build something that has different standards than when you build a dwelling unit.

Chairman said from his standpoint, they didn't come in with clean hands. Somewhere along the line, the process was skipped, dropped or whatever. We didn't know about it until we knew about it, after the fact.

Mr. Marrelli said the permit was for 272 sq. ft and the building is 644 sq. ft. Our limit is 675 sq. ft. He has 2 buildings.

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Pg #10

Chairman doesn't want to keep adding verbiage to the ordinance. The problem to me is that you're putting more law on top of law.

Ms. Calta feels it needs more definition aside from the utilities argument.

Mr. Marrelli said we have two definitions of dwelling units in our codes and they contradict each other. It needs to be cleaned up.

I have the definition that's used by the **State of Ohio Residential Code** which I would like to use as THE definition, all consistent through our code book:

“Dwelling Unit” A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

Our accessory structure ordinance is unclear because it uses pleural and singular language in the same paragraph. We have to be specific in how many buildings are going to be allowed and what the maximum size is per building or per two buildings. That has to be clear. We can clean it up to say; “Accessory use vs. uses” Building vs. buildings”. Shaker Hts says you can have a garage and a storage building, one of each.

Mr. Marrelli goes back to Scasny's case. If you look at the pictures of the items being stored in that building and go back to the definition of a dwelling unit, everything that could be in a dwelling unit is in this storage building. Our definition of a dwelling unit says if you could live in it, cook in it, eat, sleep & go to the bathroom in it it's a dwelling. You can do everything in this building that you could do in your house except they tell me, take a shower.

Ms. Calta asked John if there's a definition in the Ohio Building Code for 'accessory structure'.

Mr. Marrelli doesn't think so but will look.

Mr. Marrelli hands out our **Planning and Zoning Code**:

1145.01 (l) “Dwelling” means a building arranged, intended or designed to be occupied by not more than two families living independently of each other and doing their own cooking upon the premises.

1113.08 (a) “Dwelling Unit” means space within a dwelling, comprising living, dining, sleeping room or rooms, storage closets, as well as space and equipment for cooking, bathing and toilet facilities, all used by only one family and its household employees.

1113.08 (b) “Dwelling” means a building designed or occupied exclusively for nontransient residential use and permitted accessory uses, including one-family, two-family or multi-family buildings.

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Mr. Marrelli thinks the OBC Residential Code has the best definition. I want to get rid of these other definitions and replace them with the Ohio Building Code definition.

Mr. Marrelli said **Shaker Heights** tries to limit what you can do with an accessory structure by saying the following and I have no problem with adding this sentence to our accessory structure ordinance:

F. **Occupancy Limitation**: No accessory building shall contain living quarters.

Chairman likes the language in our 1145.01; arranged, intended or designed.

Discussion ensued on an argument people could make from both sides.

Mr. Marrelli recommends the Committee brainstorm how we could get a solid definition consistent through our zoning code of what a dwelling unit is. I don't know what's going to happen with the Hamill / Scasny scenario. It's with Council now. If you look at the documents Lynne Hamill brought, and I appreciate the fact they took the pictures of the inside of the building for us. I told her we were looking at our ordinances, she brought in the pictures and I appreciate that. What she also did was give us pictures of the shed (where the firewood is) that the BOA said they need to get rid. The **BOA ruling** was:

“You built a woodshed without a permit. We want you to take all the wood out of the woodshed, put it into your garage and dismantle the woodshed. Then you'll have one code compliant sized building. Then you won't be able to live in your cottage/garage”.

Mr. Cappello asked if the Zoning Board wants them to remove the toilet.

Mr. Marrelli said no.

Chairman asked where the plumbing's coming from.

Mr. Marrelli said it's tied into the house and goes to the septic.

Mr. Marrelli throws this out; An accessory building that's supposed to be a garage vs. a dwelling unit that has a place for living, sleeping, eating & cooking. How do you address this situation when the only thing keeping them from using this to sleep, eat or cook is the wood.

Chairman replied, I think they remove the bathroom. That was never approved. John clarified the sanitary sewer was approved in 2006 and they ran a gas line to a generator and then picked up that building to put a furnace in there. There's no prohibition against putting heat in there.

Mr. Marrelli uses Jimmy Mills' garage as an example. He built this big garage. He's a car buff. He wanted heat out there. He ran a gas line. He likes to wash his cars. He ran a water line. He didn't want to run back in the house to go to the bathroom. He ran a sewer. He hasn't used the sewer. He hasn't put in bedrooms or anything, but it's there. Scasny's utilities all have permits.

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Pg #12

Chairman Saponaro said it's real simple. You go back to the ordinance and their initial application. It's not what they intended it to be.

Mr. Marrelli confirmed the permit was approved for a 272 sq. ft. garage with a drawing of a driveway to it. There's no driveway.

Chairman asked John to line up the cottage/garage photo for them. John points out the upstairs, big screen TV, phone, refrigerator, microwave, washer & dryer.

Chairman doesn't see how you can o.k. this and then deny a whole flood of other people. You o.k. this and you set a precedence.

Mr. Marrelli said one utility at a time doesn't seem like it changes the character of a building but when you have them all, it changes the character.

Chairman recalled at one point someone brought up the argument about camping in your own backyard. But, camping by nature is a temporary event.

Ms. Calta hasn't been able to put her finger on the smoking gun. Even if you put in one of the provisions that says accessory structures are not to be used for living quarters, then it comes down to enforcement and unless John's sitting in their yard 24/7 with his binoculars. The question is, is there a different deterrent? I think we need to find a marriage of the two where there's a deterrent enough that it can be enforced.

Chairman said conceivably we can tell them to take this down to 272 sq. ft, that's what you have a permit for. The other problem is you have a neighbor who has an issue with it. However they want to cast her in this whole scenario, she may live out of town, but that's neither here nor there. The fact of the matter is they did not comply with the permit.

Mr. Kucharson said my opinion is they gambled and got caught. Do you let them slide and set an example?

Mr. Marrelli said Mr. Scasny can come back and apply for a permit for the building as it stands at 644 sq. ft because it meets code. I'd have to let him go to the ARB and get approval for that building. That won't change the fact that there's a washer & dryer in there.

Chairman said correct me if I'm wrong. You can't be arbitrary and capricious in terms of putting conditions on someone's permit. Ms. Calta agrees. Joe continues, in this situation the problem is he's already been an offender. We say take it down to 272 sq. ft. He turns around and says he wants to apply for a permit for the alterations/expansion that's already been built. It would be under the 675 sq. ft max. What prohibits us putting conditions to that and saying fine, however, you could use it as storage but you can't have a TV plugged in there, a refrigerator or any household appliances. Do we run afoul?

Ms. Calta replied that goes back to enforcement. Do you send John out every 30 days to see? What's he going to do, put the TV away when John comes out to inspect?

Chairman said the enforcement part is very valid. I'm talking about from a standpoint of saying this is somehow discriminatory, you are violating your own code because there's nothing in your code that stops me from having this. Are we able to do that because of all the circumstances?

Ms. Calta said you could. Last meeting we talked about any Case Law that would give us direction on an issue like this. We found the Case Law says it's your discretion. It's based on your code to interpret your code. It was one of those strange areas which I actually thought I was going to find some direction by the Board of Appeals or even the Supreme Court. It all said it's local, look at your code and enforce it as best you can.

Mr. Marrelli brings up the issue of the overhead door (that was approved) that he took out and put in side hinged doors because it looked better. I think he needs to make it back into a garage.

Mr. Kucharson said instead of asking for permission, he did it and now he's asking for forgiveness. I think that saying is valid. They're going to say, how could you do this, we're long time residents here. But what makes them special from all the other people that we've had to do this to?

Next Steps

1. Ordinance needs solid definition for "Dwelling Unit".
2. Committee to review Section 1157.06; Accessory Uses and send comments to Bldg Dept.

ADJOURNMENT

There being no further business, Mr. Catalano, seconded by Mr. Marrelli made a motion for adjournment. Meeting adjourned at 6:40 p.m.

Respectfully Submitted,

Deborah Garbo
Executive Assistant
Building Department