



City of Dublin

Office of the City Manager

5200 Emerald Parkway • Dublin, OH 43017-1090

Phone: 614-410-4400 • Fax: 614-410-4490

Memo

To: Members of Dublin City Council
From: Marsha I. Grigsby, City Manager 
Date: November 1, 2012
Initiated By: Steve Langworthy, Director of Land Use and Long Range Planning
Re: Ordinance 66-12 (Amended) - Modifications to Chapter 153 of the Dublin Code of Ordinances (Zoning Code) to Modify Sections 153.002 and 153.078 through 153.083 Fence Code. (Cases 12-058ADM)

Summary

On October 22, 2012, Council introduced Ordinance 66-12 regarding amendments to portions of the Zoning Code to modify the regulations regarding the use of hedges as fences. Council discussed the proposed amendment at length with several members expressing concern about the proposed modification altering the intent to preserve open views along property lines and the creation of walls of plant material between yards.

Planning has consulted with the Law Department about potential other avenues for addressing the issues raised in this amendment and discussed at the last Council meeting. After considering all options, the Law Department recommends adopting the approach proposed in the current amendment.

Council requested the list of permitted fence materials be altered to include the use of cellular vinyl. Planning has amended the ordinance to reflect this request.

Recommendation

Planning recommends approval of Ordinance 66-12(Amended) at the November 5, 2012 Council meeting.

RECORD OF ORDINANCES

Ordinance No. 66-12 (Amended)

Passed _____, 20____

AN ORDINANCE AMENDING CHAPTER 153 OF THE DUBLIN CODE OF ORDINANCES (ZONING CODE) TO MODIFY SECTIONS 153.078 THROUGH 153.083 FENCE CODE, RELOCATE HEDGE DEFINITION TO SECTION 153.002 DEFINITIONS. (CASE 12-058ADM)

WHEREAS, it is necessary from time to time to amend the Code in order to protect the health, safety and welfare of the citizens of the City of Dublin; and

WHEREAS, Sections 153.078 through 153.083 of the Dublin Codified Ordinances regulates fences; and

WHEREAS, Section 153.002 of the Dublin Codified Ordinances contains definitions of terms referenced in the Zoning Code; and

WHEREAS, the purpose of this Code amendment is to modify hedges as fences; and

WHEREAS, Sections 153.078 through 153.083 and Section 153.002 require amending to update certain Zoning Code sections to align with direction from City Council.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Dublin, _____ of its elected members concurring, that:

Section 1. Chapter 153 of the City of Dublin Zoning Code is hereby amended and shall provide as follows:

§ 153.078 PURPOSE AND SCOPE.

The purpose of these provisions is to establish regulations controlling the use and type of fences or walls. This is for the conservation and protection of property, the assurance of safety and security, the enhancement of privacy, and the improvement of the visual environment. This includes the provision of a neat and orderly appearance consistent with the neighborhood and community character.

(Ord. 75-98, passed 3-20-00; Am. Ord. 28-09, passed 6-15-09)

§ 153.079 DEFINITIONS.

FENCE - GENERAL. The word **FENCE** shall in general terminology mean any structure composed of wood, metal, stone, plastic, cellular vinyl, or other natural and permanent material erected and positioned as to enclose or partially enclose any premises or any part of any premises. Trellises, or other structures supporting, or for the purpose of supporting vines, flowers and other vegetation when erected in such position as to enclose or partially enclose or separate any premises shall be included within the definition of the word **FENCE**. Hedges, retaining walls, or radio controlled fences, shall not be included within the definition of the word **FENCE**.

Relocate (A) HEDGE to §153.002 – Definitions.

§ 153.080 REGULATIONS ON USE.

(A) *Regulations - general.* Except as otherwise specifically permitted herein, no fence or wall shall exceed four feet in height. Supporting members for wall and fences shall be located so as to not be visible from the adjoining property unless the fence is designed such that the supporting members are identical in appearance on both sides of the fence or wall. No fence or wall shall be constructed in any platted no-build zone, conservation/no disturb zone, floodway, floodplain or drainage easement for any parcel or subdivision which would be detrimental to the public health, safety and welfare. All

RECORD OF ORDINANCES

Ordinance No. 66-12(Amended)

Page 2 of 3
Passed _____, 20____

portions of the property shall remain accessible from outside the fence area by means of a gate or other opening.

(1) The fence or wall shall not be permitted to encroach upon public rights-of-way or easements or no build zones, conservation/no disturb zones. The fence or wall shall not be located so as to adversely affect the vision of drivers on the public streets or from driveways intersecting public streets.

(2) The height of a fence shall be measured from the established grade line to the highest point of the fence including posts and finials. The height of the fence may not be artificially increased by the use of mounding unless otherwise required by the zoning district regulations.

(B) *Permitted fencing.* Fences shall be permitted as follows, except as otherwise specifically permitted herein.

(1) *Open fences.*

(a) Open or partially open, (ornamental or decorative) fences shall be permitted in all zoning districts and shall be no greater than four feet in height above the established grade, unless otherwise permitted herein. The partially open or open fence may be located only within the buildable area of the lot. These fences may be used to enclose the entire perimeter of the rear yard if the total lot area is greater than 30,000 square feet.

(b) Partially open or open accent fences shall be located within the buildable area forward of the primary structure if limited to four feet in height and designed to only partially enclose an area. These fences are permitted forward of the building line along scenic roadways but cannot exceed three feet in height and serve only an ornamental purpose. Fences within the front yard shall be safely placed so as not to obstruct visibility at driveway or roadway intersections.

(2) *Solid fences.* Solid fences shall be permitted in all zoning districts only in rear yards. Solid fences shall be no greater than four feet in height, unless otherwise permitted herein, and shall not be used to enclose the entire perimeter of the property. Such fences shall be located within the buildable area of the lot and only be used to enclose a deck or patio. Solid fences shall not be located within a required side and rear yard and shall be of an approved type. Brick, stone or masonry walls are permitted forward of the building line along scenic roadways but cannot exceed three feet in height. Fences within the front yard shall be safely placed so as not to obstruct visibility at driveway or roadway intersections.

(3) *Chain link fences.* Chain link fences shall only be permitted in commercial zoning districts. Such fences may not be placed forward of the primary structure and are restricted to side and rear yards. Such fences may be erected parallel to and on, or approximately on, the common property line to a height not exceeding six feet above the established grade. Permitted chain link fences shall be painted black or shall have a black plastic or vinyl coating.

(4) *Arbors; trellises.* Arbors or trellises shall be permitted in all zoning districts. Arbors or trellises, which are detached from the building, may encroach on a required side yard, side yard which abuts a street and forward of the structure provided that:

- (a) The maximum height is eight feet;
- (b) The maximum width is five feet;
- (c) The maximum depth is three feet and;

RECORD OF ORDINANCES

Ordinance No. 66-12(Amended)

Passed Page 3 of 3, 20

(d) The surface of the arbor or trellis shall be at least 50% open.

(C) Prohibited fencing.

(1) Electrified, barbed wire, razor wire, and stockade fences are hereby prohibited in all zoning districts. This prohibition shall not be construed to prohibit electrified and/or barbed wire fences when used in conjunction with a purely agricultural use as defined by the Ohio Revised Code.

(2) Vinyl clad, plastic or pvc (polyvinylchloride) fences are hereby prohibited in all residential districts.

(D) Other fencing. The Zoning Administrator or designee may permit other fences similar in character and design to one or more of the permitted fences herein, upon application.

('80 Code, § 1309.04) (Ord. 75-98, passed 3-20-00; Am. Ord. 18-07, passed 4-9-07; Am. Ord. 28-09, passed 6-15-09)

§ 153.082 MAINTENANCE.

(A) Permitted fences, walls or structures shall be maintained in good condition, be structurally sound and completely finished at all times. Any grounds between such fences, walls or structures and property lines shall be well maintained at all times by the appropriate property owner. Supporting members for walls and fences shall be located so as to not be visible from the adjoining property unless the fence is designed such that the supporting members are identical in appearance on both sides of the fence or wall.

Section 2. This Ordinance shall be effective upon the earliest date permitted by law.

Passed this _____ day of _____, 2012.

Mayor - Presiding Officer

ATTEST:

Clerk of Council

HEDGES IN FENCE CODE
Proposed Changes: Blue
Relocated Language: Green

§ 153.002 DEFINITIONS.

HEDGE. A row of dense, closely spaced living plant material composed of vines, trees, shrubs, bushes or combination thereof.

§ 153.078 PURPOSE AND SCOPE.

The purpose of these provisions is to establish regulations controlling the use and type of fences, ~~hedges,~~ or walls. This is for the conservation and protection of property, the assurance of safety and security, the enhancement of privacy, and the improvement of the visual environment. This includes the provision of a neat and orderly appearance consistent with the neighborhood and community character.

(Ord. 75-98, passed 3-20-00; Am. Ord. 28-09, passed 6-15-09)

§ 153.079 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply, unless the context clearly indicates or requires a different meaning.

FENCE - GENERAL. The word **FENCE** shall in general terminology mean any structure composed of wood, metal, stone, plastic, **cellular vinyl** or other natural and permanent material erected ~~in such a manner~~ and positioned as to enclose or partially enclose any premises or any part of any premises. Trellises, or other structures supporting, or for the purpose of supporting vines, flowers and other vegetation when erected in such position as to enclose or partially enclose or separate any premises shall be included within the definition of the word **FENCE**. ~~Structures erected other than on lot lines or within five feet of lot lines, which have solely an ornamental purpose and which do not in fact serve the purpose of enclosing or partially enclosing premises, separating premises from adjoining premises,~~ Hedges, retaining walls, or radio controlled fences, shall not be included within the definition of the word **FENCE**. ~~Permitted solid fences are:~~

~~(A) **HEDGE.** A row of dense, closely spaced living plant material composed of vines, trees, shrubs, bushes or combination thereof.~~

(BA) **SOLID FENCE.** A fence designed to inhibit public view and provide seclusion and, when viewed at right angles, having more than 50% of its vertical surface area closed to light and air.

(1) **BOARD ON BOARD** or **ALTERNATING BOARD ON BOARD.** A fence constructed of vertical wood boards or other natural and permanent material with one-inch nominal size boards between, or upon, a frame of 2-inch nominal members and 4x4 nominal posts.

(2) **LOUVER** or **VENTILATING FENCE.** A fence made of a series of wood slats or other natural and permanent placed at an angle or positioned so as to provide air but to deflect light perpendicular to its vertical plane.

(3) **SOLID PICKET FENCE.** A fence made up of upright one-inch by two-inch nominal wooden boards or other natural and permanent material, that abut one another, side by side with no openings. The top of the fence may be pointed or blunt.

PROPOSED ZONING CODE MODIFICATION

CC 11/05/2012

HEDGES IN FENCE CODE

Proposed Changes: **Blue**

Relocated Language: **Green**

(4) **STOCKADE** or **PALISADE FENCE**. A fence constructed with a row of large pointed stakes of wood or other natural and permanent material placed upright against each other having more than 50 percent of the area of its vertical plane closed to light or air.

(5) **WALL, STONE** or **BRICK**. A solid fence constructed of stone or brick.

(**EB**) **PARTIALLY OPEN FENCE**. A fence designed to offer a vertical, but not totally blocked, visual separation. This fence is used where a low level of screening is adequate to soften the impact of the use or where partial visibility between areas is more important than a total visual screen. Partially open fences include:

(1) **PICKET FENCE**. A partially open fence made of upright wooden poles or slats. This fence may be an open fence if the space between the vertical boards is greater than the width of the boards.

(2) **ARBOR** or **TRELLIS**. A fence of latticework used as a screen or as a support for climbing plants.

(**EC**) **OPEN FENCE**. A fence constructed for its functional, ornamental or decorative effect and, when viewed at right angles, having not less than 50 percent of its vertical surface area open to light and air. Permitted open ornamental fences are:

(1) **SECURITY** or **INDUSTRIAL FENCE**. A fence made with metal wire having sharp points, barbs, edges or other attached devices designed to discourage physical contact along its length.

(2) **CHAIN LINK FENCE**. A fence usually made of metal, loops of wire interconnected in a series of joined links and including vinyl, plastic-coated or painted varieties.

(3) **ELECTRIFIED FENCE**. All fences or structures, with a device or object that emits or produces an electric charge, impulse or shock when the same comes into contact with any other object or any person, animal or thing, or which causes or may cause burns to any person or animal. So-called wireless or radio controlled fences that utilize radio signals and control collars are excluded from this definition.

(4) **SMOOTH RAIL, SPLIT RAIL, MILLED RAIL** or **CONTEMPORARY RAIL FENCE**. A fence constructed of narrow, whole or split, wooden timbers or boards placed horizontally between upright supporting posts. Smooth rail, split rail, milled rail or contemporary rail fences may have supplemental wire fencing or mesh attached to the interior of the fence. Such wire shall be painted or coated black. For the purpose of improved containment, the opening size shall be not less than 3" X 3" and designed in a horizontal grid.

(5) **WROUGHT IRON FENCE**. A fence constructed of metal, including aluminum, iron or steel, pipe, tubes or bar stock and having some type of decorative features or design. Wrought iron fences shall not have pointed ends exposed but may have finials with blunt ends.

(6) **RADIO CONTROLLED FENCE**. The use of insulated wire (typically low voltage and located underground) to transmit a radio signal to a receiving device. Radio controlled fences are exempt from these regulations.

HEDGES IN FENCE CODE
Proposed Changes: Blue
Relocated Language: Green

(7) **RETAINING WALL.** A wall composed of wood, stone, brick or other masonry material designed to hold back a portion of higher ground from a lower one. A retaining wall permits two elevation levels to be placed adjacent to each other with an abrupt vertical change between them.

(8) **ACCENT FENCE.** A fence that is used solely for ornamental purpose and does not enclose or partially enclose an area.

(Ord. 75-98, passed 3-20-00; Am. Ord. 28-09, passed 6-15-09)

§ 153.080 REGULATIONS ON USE.

(A) *Regulations - general.* Except as otherwise specifically permitted herein, no fence or wall shall exceed four feet in height. Supporting members for wall and fences shall be located so as to not be visible from the adjoining property unless the fence is designed such that the supporting members are identical in appearance on both sides of the fence or wall. No fence or wall shall be constructed in any platted no-build zone, conservation/no disturb zone, floodway, floodplain or drainage easement for any parcel or subdivision which would be detrimental to the public health, safety and welfare. All portions of the property shall remain accessible from outside the fence area by means of a gate or other opening.

(1) The fence, *or wall,*~~or hedge~~ shall not be permitted to encroach upon public rights-of-way or easements or no build zones, conservation/no disturb zones. The fence, *or wall,*~~or hedge~~ shall not be located so as to adversely affect the vision of drivers on the public streets or from driveways intersecting public streets.

(2) The height of a fence shall be measured from the established grade line to the highest point of the fence including posts and finials. The height of the fence may not be artificially increased by the use of mounding unless otherwise required by the zoning district regulations.

(B) *Permitted fencing.* Fences shall be permitted as follows, except as otherwise specifically permitted herein.

(1) *Open fences.*

(a) Open or partially open, (ornamental or decorative) fences shall be permitted in all zoning districts and shall be no greater than four feet in height above the established grade, unless otherwise permitted herein. The partially open or open fence may be located only within the buildable area of the lot. These fences may be used to enclose the entire perimeter of the rear yard if the total lot area is greater than 30,000 square feet.

(b) Partially open or open accent fences shall be located within the buildable area forward of the primary structure if limited to four feet in height and designed to only partially enclose an area. These fences are permitted forward of the building line along scenic roadways but cannot exceed three feet in height and serve only an ornamental purpose. Fences within the front yard shall be safely placed so as not to obstruct visibility at driveway or roadway intersections.

HEDGES IN FENCE CODE
Proposed Changes: Blue
Relocated Language: Green

(2) *Solid fences.* Solid fences shall be permitted in all zoning districts only in rear yards. Solid fences shall be no greater than four feet in height, unless otherwise permitted herein, and shall not be used to enclose the entire perimeter of the property. Such fences shall be located within the buildable area of the lot and only be used to enclose a deck or patio. Solid fences shall not be located within a required side and rear yard and shall be of an approved type. Brick, stone or masonry walls are permitted forward of the building line along scenic roadways but cannot exceed three feet in height. Fences within the front yard shall be safely placed so as not to obstruct visibility at driveway or roadway intersections.

(3) *Chain link fences.* Chain link fences shall only be permitted in commercial zoning districts. Such fences may not be placed forward of the primary structure and are restricted to side and rear yards. Such fences may be erected parallel to and on, or approximately on, the common property line to a height not exceeding six feet above the established grade. Permitted chain link fences shall be painted black or shall have a black plastic or vinyl coating.

~~(4) *Hedges.* Hedges shall be permitted in all zoning districts. Hedges shall not be located within any no build zone, conservation zone/no disturb zone, drainage easement, floodway, flood plain or other area which would be detrimental to the public health, safety or welfare.~~

(54) *Arbors; trellises.* Arbors or trellises shall be permitted in all zoning districts. Arbors or trellises, which are detached from the building, may encroach on a required side yard, side yard which abuts a street and forward of the structure provided that:

- (a) The maximum height is eight feet;
- (b) The maximum width is five feet;
- (c) The maximum depth is three feet and;
- (d) The surface of the arbor or trellis shall be at least 50% open.

(C) *Prohibited fencing.*

(1) Electrified, barbed wire, razor wire, and stockade fences are hereby prohibited in all zoning districts. This prohibition shall not be construed to prohibit electrified and/or barbed wire fences when used in conjunction with a purely agricultural use as defined by the Ohio Revised Code.

(2) Vinyl clad, plastic or pvc (polyvinylchloride) fences are hereby prohibited in all residential districts.

(D) *Other fencing.* The Zoning Administrator or designee may permit other fences similar in character and design to one or more of the permitted fences herein, upon application.

('80 Code, § 1309.04) (Ord. 75-98, passed 3-20-00; Am. Ord. 18-07, passed 4-9-07; Am. Ord. 28-09, passed 6-15-09)

HEDGES IN FENCE CODE
Proposed Changes: Blue
Relocated Language: Green

§ 153.081 PERMIT AND INSPECTION.

Any fences which may be permitted shall require the issuance of a Certificate of Zoning Plan Approval after the same has been approved.

(A) Upon permit application, each property owner shall provide the following:

(1) Name and address of the owner of the lot for which the permit is requested.

(2) Name and address of the person, firm or corporation that will carry out the actual installation.

(3) An overall plot plan including the shape and dimensions of the lot together with the location, material, height and location of all proposed and existing fences, potential visibility conflicts and the drainage flow across the lot. Section and elevation views of the proposed fence detailing its construction and method of fixture to the ground should also be submitted.

(B) The Zoning Administrator or designee may waive this requirement when the fence location is such that encroachment is not in question. Upon obtaining a building permit and constructing the fence, the property owner shall ascertain that the fence thus constructed does not deviate from the plans as approved by the Zoning Administrator or designee issuing permits and does not encroach upon another lot or parcel of land. The municipality shall furnish such inspection, as is deemed necessary, to determine that the fence is constructed in accordance with plans submitted for permit, provided however, that such determination by the municipality shall not be construed to mean the municipality has verified the fence is not encroaching upon another lot, nor shall it relieve the property owner of the duty imposed upon him or her herein.

(Ord. 75-98, passed 3-20-00; Am. Ord. 28-09, passed 6-15-09)

§ 153.082 MAINTENANCE.

(A) Permitted fences, walls, ~~shrubby, hedges~~ or structures shall be maintained in good condition, be structurally sound and completely finished at all times. Any grounds between such fences, walls, ~~shrubby, hedge~~ or structures and property lines shall be well maintained at all times by the appropriate property owner. Supporting members for walls and fences shall be located so as to not be visible from the adjoining property unless the fence is designed such that the supporting members are identical in appearance on both sides of the fence or wall.

(B) Normal repairs and maintenance. None of the provisions of this Code shall be interpreted to prevent normal repairs and maintenance or to strengthen or correct any unsafe condition of any fence.

(C) Nonconforming materials. Except that any maintenance that replaces more than 10% of the surface area of an existing fence, which has nonconforming materials, within a 12 month period shall require reconstruction of the entire fence with a material permitted by this subchapter.

(Ord. 75-98, passed 3-20-00; Am. Ord. 28-09, passed 6-15-09)

PROPOSED ZONING CODE MODIFICATION

CC 11/05/2012

HEDGES IN FENCE CODE

Proposed Changes: Blue

Relocated Language: Green

§ 153.083 COMPLIANCE REQUIRED; CONFLICTING PROVISIONS.

(A) Fences shall be designed, erected, altered, reconstructed, moved, anchored, positioned and maintained, in whole or in part, strictly in accordance with the provisions of this subchapter and building code provisions applicable to fences.

(B) If these standards conflict in any way with the standards in any planned development zoning text, then the most restrictive standards shall prevail. Standards in this section applicable to matters not covered in the planned development zoning text shall also apply.

(C) Notwithstanding any other provisions in this Code, in all residential districts fences erected prior to the effective date of Ord. 75-98 shall not be considered non-conforming structures and shall be permitted to be replaced in the same location and at the same or lesser height as existed on the effective date of Ord. 75-98. In addition, the replacement fence shall be of a material as provided in § 153.080(C). A Certificate of Zoning Plan Approval shall be required.

(Ord. 75-98, passed 3-20-00; Am. Ord. 28-09, passed 6-15-09)



City of Dublin

Office of the City Manager

5200 Emerald Parkway • Dublin, OH 43017-1090
Phone: 614-410-4400 • Fax: 614-410-4490

Memo

To: Members of Dublin City Council
From: Marsha I. Grigsby, City Manager *MIG*
Date: October 18, 2012
Initiated By: Steve Langworthy, Director of Land Use and Long Range Planning
Re: Ordinance 66-12 - Modifications to Chapter 153 of the Dublin Code of Ordinances (Zoning Code) to Modify Sections 153.002 and 153.078 through 153.083 Fence Code. (Cases 12-058ADM)

Summary

Ordinance 66-12 amends portions of the Zoning Code, as requested by City Council, to modify the regulations regarding the use of hedges as fences.

Background

An extensive revision of the fencing provisions of the Zoning Code in 2000 resulted in restricting fences to the buildable area of each lot. A subsequent companion amendment to the accessory structure provisions limited the placement of sheds, gazebos and similar structures to the same buildable area. The intent of these changes was to prohibit the placement of fencing and accessory structures along common property lines and to create open views in residential developments.

At the July 2, 2012 City Council meeting, after discussion of an enforcement situation regarding landscaping on a residential property, Council directed Planning to prepare appropriate legislation to amend the Zoning Code to address landscaping and hedges used as fences in the Code.

Hedges in Zoning Code

Planning conducted an extensive review of the Zoning Code for any regulations related to fences and how landscaping could be used as fencing. From that review the least disruptive approach found was to remove references to hedges, as defined in the Zoning Code, as they were associated with fences or walls. This amendment affects Sections 153.078 through 153.083 (fence provisions of the Code). The proposed amendment addresses comments from City Council and its Community Development Committee, noting that hedges are used in many parts of the city as fences as well as screening and that it should be an acceptable feature of the community.

The proposed amendment includes the relocation of the definition of hedges from Section 153.079, Fence Code Definitions, to Section 153.002, General Definitions, of the Zoning Code. Completely removing the definition of hedges is not practicable as it is used in the landscape provisions of the Zoning Code for screening for service structures, vehicular use areas, land use

buffers, and as a way to soften the appearance of a fence or evergreen screen. These sections of the Zoning Code have their own regulations on the use and location of hedges and are not modified under this amendment.

Recommendation of the Planning and Zoning Commission

On September 20, 2012, the Commission recommended disapproval to City Council of the proposed modifications to the Zoning Code related to modifying hedges as fences in the fence code section of the Zoning Code.

The Commission commented that the fence code, as written, has been effective in preserving the original intent of keeping open views along shared property lines. Several members stated they did not believe the proposed amendment best addresses Council's direction to Planning and expressed concern the proposed modification would encourage walls of plant material between yards. The Commission suggested a more in depth modification, which would protect the original intent of the 2000 fence code amendment through a better definition, which clearly defines when a hedge would be interpreted as a fence as well as potential regulations for opacity, percentage of property lines covered, variety of plant material, and height of plant material.

Recommendation

Planning recommends approval of Ordinance 66-12 at the second reading/public hearing on November 5, 2012, provided that City Council finds that the amendment properly addresses their concerns.



City of Dublin

Land Use and Long
Range Planning

5800 Shier Rings Road
Dublin, Ohio 43016-1236

phone 614.410.4600
fax 614.410.4747

www.dublinohiousa.gov

PLANNING AND ZONING COMMISSION

RECORD OF ACTION

SEPTEMBER 20, 2012

The Planning and Zoning Commission took the following action at this meeting:

4. Fence Code Amendment 12-058ADM

Administrative Request

Proposal: To amend the Zoning Code requirements regarding hedges.
 Request: Review and recommendation to City Council regarding amendments to the Zoning Code under the provisions of Zoning Code Sections 153.232 and 153.234.
 Applicant: City of Dublin, Marsha Grigsby, City Manager
 Planning Contact: Eugenia M. Martin, ASLA, Landscape Architect.
 Contact Information: (614) 410-4650 | emartin@dublin.oh.us

MOTION: To recommend disapproval to City Council of this administrative request so the Commission could receive additional guidance from City Council.

VOTE: 7 – 0.

RESULT: Disapproval of this administrative request was recommended to City Council.

RECORDED VOTES:

Chris Amorose Groomes	Yes
Richard Taylor	Yes
Warren Fishman	Yes
Amy Kramb	Yes
John Hardt	Yes
Joseph Budde	Yes
Victoria Newell	Yes

STAFF CERTIFICATION

Eugenia M. Martin, ASLA
Landscape Architect

4. Fence Code Amendment 12-058ADM

Administrative Request

Chris Amorose Groomes introduced this Administrative Request to amend the Zoning Code requirements regarding the Fence Code. She said the Commission will make recommendation regarding this proposed Code Amendment to City Council.

Eugenia Martin presented this request for a recommendation to City Council to amend portions of the Zoning Code, as requested by Council to modify hedges as fences in the Fence Code. She said an amendment to the Zoning Code in 2000 restricted fences to the buildable area of each lot with the intent to prohibit the placement of fencing and accessory structures along rear lot lines in order to keep open views along the common property lines. Ms. Martin explained the topic of landscaping as a fence was brought up in 2008 by the Community Development Committee of Council (CDC) when they discussed no-build zones, no-disturb zones, and conservation easements. She said at that time, members of the CDC felt landscaping was an amenity that was commonly seen throughout the City. She said they decided at that time, they would maintain status quo in regards to enforcement. She said City Council, on July 2, 2012, gave Planning direction to prepare legislation to amend the Zoning Code in order to address landscaping and hedges used as fences. Ms. Martin said at the Council meeting, it was brought up that this was an amenity throughout the City that we want to maintain as well as preserve the ability to have privacy in backyards.

Ms. Martin said Planning extensively reviewed the Zoning Code, finding every reference to hedge, hedges, shrub, shrubbery, bush, and bushes, throughout the Code and the manner it was referenced. She said Planning's analysis of the least disruptive way of addressing City Council's direction would be to remove any reference of hedges within the Fence Code section of the Zoning Code and relocating the definition of hedges from the Fence Code section to the General Definitions. She explained that hedges are defined in the Zoning Code as a combination of shrubs, trees, and vines. She said hedges are identified for use as vehicular use screening, property perimeter requirements, as well as in other parts of the Zoning Code for Standard Districts, where hedges are encouraged to screen fences. She said if a hedge was a fence, under that scenario it would be a fence screening a fence. Ms. Martin said what previously would not have been allowed, such as evergreens planted along the property line by a resident which grew together and would be identified as a fence, would be permitted with this amendment. She presented photographs of examples where that has happened.

Ms. Martin said Planning's recommendation is approval to City Council of the proposed Code Amendments as far as removing hedges and fences, as requested by Council.

Ms. Amorose Groomes invited public comments with respect to this application.

Mary Ziegler, 6294 Wismer Circle, said when they built their home in 1993, the builder explained there were very specific deed restrictions with regard to fences. She said the deed restrictions indicated only split rail fences were permitted and they could only be in the buildable area. She said the neighborhood was to have a very open feel. Ms. Ziegler said the original owners of the property behind her had planted three white pines on each corner of the backyard. She said when the current neighbors moved in about seven years ago, they said they were going to plant trees and they had talked to the City Forester to see if that was okay. She said when the trees were planted, they were shocked because they had envisioned only a few more of the same kind of tree. Ms. Ziegler said eight or nine Norway Spruce were planted on each side of the neighbors' yard, so there was a total of about 30 trees including the existing ones. She said they were planted in a straight line with no landscape bed. She said Norway Spruce grow 30 to 50 feet tall and 30 feet wide. Ms. Ziegler said while they can respect their neighbors would like privacy screening in their backyard, this was too much. She said the yard will be encircled like a fortress. She

said it was not attractive, and they feel it is not in keeping with feel of the neighborhood. She said they did not want their yard to have a 30 to 50-foot wall on any perimeter.

Ms. Ziegler said the City Forester was shocked when she learned how many trees were planted because she had no idea that many trees would be planted. She said she was not aware of any written plan submitted that specified the number of trees and how they would be planted. Ms. Ziegler said she also had spoken to Former City Council member Tom McCash, a member of City Council at the time the Fence Code was amended. She said Mr. McCash explained the intent of the Code was to provide clear, open green space and view space in the neighborhoods and landscaping was to be done in islands of landscaping with open space between them.

Ms. Ziegler said they had offered to work with the neighbors and put landscaping in their yard so there could be screening without a big wall, but they were not interested. She said they had contacted a zoning attorney who advised them they could proceed by either going to Civil Court for the violation of deed restrictions or expecting the City to enforce the Code, and if action was not taken, take the City to court. She said they had contacted the City and the response was there was a violation and every fifth tree needed to be moved back five feet so they were not planted in a straight line. Ms. Ziegler said that would still be a wall. She said the City's next response was to say when the trees reached 50 percent opacity, there would be a violation. She said now the trees are about at 100 percent opacity, which is much different than what the photograph presented earlier showed.

Ms. Ziegler said now, the City's response is to change the Code to allow the trees. She said the proposed amendment indicates City Council wants to allow trees as fences. She said they think this is not the right thing for Dublin. She said Dublin is about aesthetics. She said the City has beautiful landscaping, especially along the roadways, so landscaping is obviously very important in Dublin. She said Dublin is also about community and a 30 to 50-foot fence around a backyard is not about community. She said they feel that Dublin is about building community, not about building fences. She said they believed there could be a reasonable interpretation that allows screening without a blanket statement that says anything goes. Ms. Ziegler said the screening seen in a neighborhood should be noticeably different from the screening the City requires around a dumpster.

Ms. Ziegler said these trees also have secondary effects. She said birds love the trees, which is great, but they generate a lot of bird droppings on their deck and swing set. She said additionally, rabbits live under them to avoid the neighbors' dogs and always poop in the same spot in their yard which they have to avoid. Ms. Ziegler said they communicated these issues to their neighbors whose responses were to add more bird feeders and mock them at the City Council meeting.

Ms. Ziegler said as the trees grow, they will overtake the entire back perimeter of their yard and easily cross the property lines. She said branches can be trimmed on a deciduous tree, but not at the bottom of these larger trees without having it look really bad.

Ms. Ziegler asked the Commission to come see the trees from their backyard before voting. She said they would also like to show the Commission nearby examples where trees have been used as screening in an attractive way without building a large wall. She pointed out the photograph shown of their house with the trees behind them was taken when the trees were much smaller. She said another photograph was shown two houses down from them as an example of a hedge as a fence but it was a mix of evergreens and deciduous trees. She said eight to ten evergreens of the same species in a row becomes one solid unnatural looking wall, but when there are a variety of deciduous and evergreen trees, even if it surrounds the property, there is a little opacity to see through it so it is not a solid wall. She suggested the Fence Code be revised to allow a good variety of screening, but not allow a solid wall. Ms. Ziegler said what they were asking was very reasonable where a solid fence was not a neighborhood thing and it was aesthetically, very ugly. She said there were other solutions that could be applied to allow screening

but still provide an open and neighborhood feel. She said they did not understand why you cannot have a six-foot high wooden fence, but yet you can have a 40-foot living fence.

Richard Taylor asked if the existing 6 to 8-foot high trees constituted a fence, and if so, why has there not been a Code Violation issued. Steve Langworthy explained that a violation notice had been sent to the property owners and the result of that was included in the City Council minutes distributed in the packet.

Ms. Ziegler reiterated the Commissioners needed to come see the situation from their perspective before any vote was taken. She said after they see it, she hoped they would consider writing an amendment that can be the best of both worlds for Dublin; that provides screening for backyards, yet makes it noticeably different than something that surrounds a dumpster. She said Dublin is not about building walls, it is about building community.

Jane Krukowski, 6291 Wismer Circle, said she could see the line of trees behind the Ziegler house from her front window. She said from the Ziegler's backyard, the row of trees look like a fence. She said she had trees and privacy, but her trees were distributed throughout her yard, as were other neighbors. She said she understood when the houses were built, the developer stated there were to be no fences and no straight lines of trees to act like a fence. She said she supported Ms. Ziegler and the neighborhood. She said she read in the minutes that City Council wanted the words 'shrubs' and 'shrubbery' removed from the Code. She said there was a difference between a shrub or shrubbery and a pine tree. She said shrubs do not get as high and will not create a wall. She said it was amazing when actually seeing the trees in the yard, because it is as if the house is closed inside a wall. She said the solid wall of trees seen from the Ziegler's backyard will affect the value of her home.

Joe Budde asked if the proposed amendment met the intent of what City Council wanted to have happen. Mr. Langworthy said Planning believed that it did meet the direction given at the time. Mr. Budde said it appeared Council's direction was that they wanted change, but he could not tell in what direction. He said the minutes reflected Council wanted Planning to 'modify hedges and fences in the Fence Code.' He asked if Council wanted to eliminate them. Mr. Langworthy said the recommendation of Council was to allow living material to in essence, act as a fence, but not be called a fence. He said that the Council meeting minutes needed to be read and the recording listened to in order to get the full impact of what Council wanted. Mr. Budde asked if this proposed amendment would allow the existing tree arrangement mentioned to exist without a violation. Mr. Langworthy pointed out that when the trees were planted, they were okay. He said the homeowners were told at some point, the trees would grow to the point where the tree row would be considered a fence and code enforcement would be necessary when that time came.

Warren Fishman asked if an original 25-foot farm fencerow of trees was left by a developer, and residents planted pines to augment it, would it be considered a fence under the current code. Mr. Langworthy said that would be considered a fence because the result would be the same. Mr. Fishman pointed out that a 25-foot fencerow was pretty opaque. Mr. Langworthy said Planning had discussed that someone would be penalized for removing an existing fencerow. Ms. Martin said a homeowner could be penalized under the current code if they augmented an existing tree row because as written, it was a combination thereof; of trees, shrubs, vines, and so forth.

Victoria Newell said she was surprised to see the elimination from the text because she had always felt there was no desire in Dublin to have people completely fence in yards with trees to the point that they really do become a fence which is what this resident is facing. She suggested there could be a compromise in the way the text was written that might provide a more sensitive amenity when people are augmenting their yards with landscaping around the border, if they are not putting something that is a straight row of trees.

Amy Kramb said she agreed this was the simplest approach, but she thought it would cause many problems because there is an expectation when people move into these housing developments whether it is written in the development code specifically as far as landscaping versus a fence. She said she thought leaving the Code at hedges of a certain height as it says fences of four feet tall are okay. She suggested 'hedges to four feet tall are okay.' She said the proposed amendment was the least disruptive as far as interacting with all the other Code pieces, but she did not know if it was the right way.

Ms. Martin said it was the least disruptive. She said however, there are lots in Tartan West where hedges are forward of the primary structure, and at that point, they violate Code because fences are not permitted to be forward of a primary structure. She said as Planning started to evaluate how a change would affect everywhere else, the least disruptive change is to remove hedges from the Fence Code and not identify a hedge as a fence because it is a living thing. She said parts of the hedge may die and if those plants may or may not be replaced which impacts the opacity where as a fence is a solid structure.

Ms. Kramb agreed that would be hard to enforce, but said to open it up to allow neighbors to plant upright arborvitaes as a solid wall would be ugly. Ms. Martin said currently, as the Code is written, that could be done if the plants were located in the buildable area. Ms. Kramb asked if there were height or opacity restrictions within the buildable area. Ms. Martin said it would depend upon each development text and property. Ms. Kramb asked if the current Code restricted the height of hedges. Ms. Martin explained the Zoning Code did not currently restrict the height of hedges, but if it were an open or solid fence, there were height restrictions.

John Hardt clarified what the Commission was reviewing tonight was an amendment to the City Zoning Code which applies to all properties within the City, and deed restrictions were unique to the subdivision. He said this Commission has no ability to effect deed restrictions, no matter what happens tonight. He said deed restrictions trump the Code. Ms. Ziegler said that she did not know that.

Jennifer Readler explained they were discussing a couple of different documents. She said a planned development would have a development text which the City would enforce. She said if there was a deed restriction, enforcement of them requires private action. She said there could be a much more stringent deed restriction than the Code, and where the Code may allow it, the deed restriction may not. Mr. Hardt reiterated the City had no authority to change deed restrictions.

Mr. Hardt said he understood City Council's pleasure was to allow hedges. He said there was language in the current Code that specifically says hedges shall be permitted, and if the intention is to permit hedges, he did not know why they were talking about striking that language. He said he was not sure what the Commission had in front of them meet Council's intention and he was not sure he agreed with Council's intentions. He said it had always been his understanding that one of the primary planning principles of residential subdivisions in Dublin was to encourage open space and its use which is why they make fences so difficult to have. Mr. Hardt said he thought that turning around and allowing hedges in whatever configuration is kind of the antithesis of the intent behind many of our neighborhoods. He said he grew up in a house with a hedge on two sides of the backyard, and it did not act like a fence; it acted like a wall and they never talked to that neighbor. He said the fence on the other side of his yard had a completely different look, feel, and culture. He said having that perspective, he could not get his mind around why we would do a 180-degree turn and let this be something they may want to encourage.

Richard Taylor said he thought Planning had done exactly what City Council asked them to do, however he also disagreed with what Council had asked them to do. He said this does not solve the problem. He said it was like 'using a sledgehammer when a thumbtack would do.' He said it was clear from the photographs shown that most of the neighbors get it. He said done right, landscaping is supposed to look like it is done in the whole subdivision, not one house at a time. He said regardless of what the tree row is, it acts as fence or as a lawyer would say, 'It is acting as a fence whether it meets the definition of that

or not.’ Mr. Taylor asked if the trees were currently in violation. Ms. Martin confirmed they were planted outside of the buildable area.

Mr. Taylor suggested if they wanted to restrict their usable area of the yard to half of their backyard, that would be fine, but he did not think they should be infringing upon the view corridor at the price of the neighbors. Mr. Taylor said it seemed straightforward they were in violation of the Code and the Code should not be changed to resolve a squabble between two neighbors.

Ms. Amorose Groomes recalled a Dublin property where approximately 400 trees were clustered in various areas and that was a good example of what the Commission was looking for in situations such as this. She said she could not imagine this is really what we want to do in all of Dublin’s neighborhoods because we go so far in making sure what materials are used, all the houses are complementary to one another, and driveways are just so, and then write a carte blanche that whatever plant material you wanted could be picked and planted in any fashion. She said she thought it would be really destructive to neighborhoods if the City encouraged this kind of behavior. She reiterated she could not imagine this is what they would want to encourage without some control measure in place, at least by area, species, or height.

Ms. Amorose Groomes suggested when the neighbor’s trees mature to 50 feet tall, they will cast shadows into the other yards which could preclude what they can do in their yards, such as having a garden. She said she thought it was a shame to preclude that. She also recalled on a recently approved development there was the importance of preserving trees in the backyards because they did not want to look at the neighbors behind them. Ms. Kramb pointed out the difference was the people buying those lots already knew that. Mr. Hardt said the difference is those were natural and not walls of 52 identical trees.

Ms. Amorose Groomes said those were very different situations, in the lot depths are very different, and there is a different representation of what the shadows will be and how that will affect the individual home. Ms. Amorose Groomes said she could not see that this was what City Council wanted to do or what they wanted to accomplish.

Mr. Budde said if this situation would happen on every lot in the subdivision, it would remind him of the California suburbs where there were 8-foot high fences everywhere, and no one ever met their neighbors or knew what they looked like. He said they were not a part of the community.

Ms. Amorose Groomes said she did not hear support for this proposed amendment, but she thought they should try to provide some solution. She said they probably needed to look for opacity, percentage of property lines that are covered, a variety of plant materials and evergreen and deciduous trees, and shrub height versus tree height.

Ms. Kramb said she thought the blanket; ‘Everything is okay’ is not the right approach.

Mr. Taylor said he agreed that possibly some kind of specificity of what might be acceptable might work. He asked if this was a prevalent problem that many neighbors throughout Dublin were having, or was this a very isolated incident, and the Code is good 99 percent of the time.

Ms. Amorose Groomes said by the Commission’s standards, the Code is good; it just was that this resident did not like it.

Mr. Hardt said whenever an aspect of a Code is changed, there are tentacles that go out, and he understood the intent here was to avoid that. He said he would be okay with this proposed Code amendment in terms of saying live plants do not constitute fences any more, but in concert with that, there should be some other Code amendment, probably the Landscape Code that then talks about if you are going to do it, this is what needs to be done.

Ms. Martin said currently, landscaping is not regulated in backyards. She said regarding the prevalence of this happening, it is not just in this neighborhood; it has been done throughout the City. Mr. Langworthy said it was not prevalent, but it existed elsewhere.

Mr. Taylor said they could define when landscaping is and is not a fence in the Code, or since there is a definition of fencing that was subjective, it was a situation where when someone plants something in the no-build zone and it gets fence-like, enforcement needs to tell them that it needs to be corrected. He said otherwise, to meet Code, they will have to submit a landscape plan every time they want to plant something in their yard.

Mr. Fishman suggested a simpler solution would be not to have to submit a landscape plan for the backyard. He thought the deed restriction said that this subdivision had a forced and funded home owners association. Ms. Krukowski said the Association had not been enforced or funded for the 15 years she had lived there.

Mr. Fishman said if the association had a board and money, if this was a deed violation, this would be an association problem. He said the association could hire an attorney and have the deed restriction enforced and that was an easy way to handle the problem.

Mr. Langworthy suggested there were enough comments on the record and the Commission should go ahead, if they like, and make a recommendation to City Council to not recommend this and include something in the motion asking Council to reconsider giving Planning and the Commission more direction about what else they may want to accomplish. He said he suspected this would have a debate once again when it went to Council and given the comments that the Commission made, the result may be different.

Ms. Krukowski said their problem could be solved by going to court against the neighbor, but the reason she came to speak to the Commission was she felt it was a bigger Dublin issue. She said she cared about the City and the feel of the City and the comment throughout was that a sense of community is hampered if you have a 50-foot wall between every yard. She said she thought the Commission, who seems to be the guiding force for aesthetic issues in the City on how things are done and how they make them look good, was the right group to address the issue by having specific standards as listed by Ms. Amorose Groomes. She said the City needed something to use that they can easily enforce.

Mr. Taylor said in the meantime, the trees were getting larger and he did not understand why the City did not pursue resolving the issue with a chainsaw.

Ms. Amorose Groomes said she believed this should be forwarded to City Council with the Commissioners recommendations. She said maybe the Commission could get some more guidance from Council as to how they would like to see this applied City wide and what might translate into the built environment. She said what the end result, or built environment, is what the Commission considers. She said further Council feedback is needed if their intent is for Dublin's built environment and neighborhoods to have natural walls or is it to have open vistas and what we have always been about in the past. She said she did not agree with changing the Code at all for this kind of purpose without thinking it through and illustrating all of the other pitfalls that might be opened.

Ms. Krukowski said her fear was this situation would grandfathered because the trees were already there. She said she hoped the concern that the neighborhood had with these trees was seen. She did not want the situation to continue another year. Ms. Amorose Groomes said Mr. Taylor had asked that Code Enforcement get back on the job.

Mr. Hardt said he would like to see a broader evaluation of how problems like this one might be resolved in the future through complimentary Code changes or other policies. Ms. Amorose Groomes said she liked the idea of handling it through the Fence Code if they precluded any material that constitutes fencing and that it might be the avenue to address rear and side yard opacities in the Landscape Code.

Ms. Newell suggested a definition that would more clearly define when a hedge would be interpreted as being a fence as in when it is built in a linear fashion of same species of material, it does not have any variation in elevation or change in form. She said a better definition might be that if you construct a hedge on your site in that fashion, it is going to be interpreted as a fence for the purpose of providing continual opaque screening.

Ms. Amorose Groomes commented that like all Code changes, they are never easy or as clean cut as hoped to be. She said the minutes of this meeting would be provided to City Council to review.

Motion and Vote

Mr. Taylor moved to recommend disapproval to City Council of this administrative request. Ms. Kramb seconded the motion.

The vote was as follows: Ms. Newell, yes; Mr. Budde, yes; Mr. Hardt, yes; Mr. Fishman, yes; Ms. Amorose Groomes, yes; Mr. Taylor, yes; and Ms. Kramb, yes. (Disapproved 7 – 0.)

Mr. Langworthy said the recommendation will be sent to City Council for their meeting on October 22, 2012.

Planning Report

Thursday, September 20, 2012

Zoning Code Amendment

Case Summary

Agenda Item	4
Case Number	12-058ADM
Proposal	To amend the Zoning Code requirements regarding fences and hedges.
Request	Review and recommendation to City Council regarding amendments to the Zoning Code under the provisions of Zoning Code Sections 153.232 and 153.234.
Applicant	City of Dublin, Marsha I. Grigsby, City Manager.
Case Manager	Eugenia M. Martin, ASLA, Landscape Architect (614) 410-4650 emartin@dublin.oh.us
Recommendation	<i>Recommendation of Approval to City Council</i> In Planning's opinion, the proposed modifications to remove hedges from the fence provisions of the Zoning Code meets the intent of not considering trees, shrubs and living materials as fences, as directed by City Council.

Facts		Zoning Code Amendment
Case Summary	This is a request for review and recommendation of approval to City Council to amend portions of the Zoning Code as requested by City Council to modify hedges as fences in the fence code.	
Details		
Process	Code Section 153.232(B)(9) provides the Planning and Zoning Commission with "other powers and duties" which includes making recommendations to City Council for amendments to the Zoning Code. The Commission should review the modifications, provide input, and vote on the changes. The proposed amendment for modifying the use of hedges as fences will be forwarded to City Council for its consideration.	
Background	<p>An extensive revision of the fencing provisions of the Code in 2000 resulted in restricting fences to the 'buildable area' of each lot. A subsequent companion amendment to the accessory structure provisions limited the placement of sheds, gazebos and similar structures to the same buildable area. The intent of the changes was to prohibit the placement of fencing and accessory structures along common property lines and to create open views in residential developments.</p> <p>The topic of landscaping as a fence was raised initially in 2008, when Planning presented a number of issues to the Community Development Committee of Council regarding landscape screening and the application and enforcement of No Build/No Disturb Zones. Members of the Community Development Committee commented at the time that they did not object to the planting of trees, hedges or 'living' fences. However, no specific direction was given to amend the Code.</p> <p>At the July 2, 2012 City Council meeting, after discussion of an enforcement situation regarding landscaping on a residential property, Council directed Planning to prepare appropriate legislation to amend the Zoning Code to address landscaping and hedges used as fences in the Code.</p>	
Sections 153.078 to 153.083	<p>Planning conducted an extensive review of the Zoning Code for language related to fences and landscaping in general. From that review the least disruptive approach found was to remove references to hedges associated with fences or walls from Sections 153.078 through 153.083 (fence provisions of the Code). This addresses comments from City Council and its Community Development Committee noting that hedges are used in many parts of the city as fences as well as screening and that it should be an acceptable feature of the community.</p> <p>The most efficient way to achieve this is to relocate the definition of hedges to Section 153.002, Definitions, of the Zoning Code. Completely removing the definition of hedges is not practicable as it is used in regard</p>	

Facts	Zoning Code Amendment
	to screening for service structures, vehicular use areas, land use buffers, and as a way to soften the appearance of a fence or evergreen screen. These sections of the Zoning Code have their own regulations on the use and location of hedges and are not modified under this amendment.

Recommendation	Adoption of this Zoning Code Amendment
Approval	The proposed modifications to the Zoning Code removes hedges as fences as requested by City Council. Planning recommends approval to City Council of this proposed Code amendment.

HEDGES IN FENCE CODE
 Proposed Changes: **Blue**

§ 153.078 PURPOSE AND SCOPE.

The purpose of these provisions is to establish regulations controlling the use and type of fences, ~~hedges,~~ or walls. This is for the conservation and protection of property, the assurance of safety and security, the enhancement of privacy, and the improvement of the visual environment. This includes the provision of a neat and orderly appearance consistent with the neighborhood and community character.

(Ord. 75-98, passed 3-20-00; Am. Ord. 28-09, passed 6-15-09)

§ 153.079 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply, unless the context clearly indicates or requires a different meaning.

FENCE - GENERAL. The word **FENCE** shall in general terminology mean any structure composed of wood, metal, stone, plastic, or other natural and permanent material erected ~~in such a manner~~ and positioned as to enclose or partially enclose any premises or any part of any premises. Trellises, or other structures supporting, or for the purpose of supporting vines, flowers and other vegetation when erected in such position as to enclose or partially enclose or separate any premises shall be included within the definition of the word **FENCE**. ~~Structures erected other than on lot lines or within five feet of lot lines, which have solely an ornamental purpose and which do not in fact serve the purpose of enclosing or partially enclosing premises, separating premises from adjoining premises,~~ Hedges, retaining walls, or radio controlled fences, shall not be included within the definition of the word **FENCE**. ~~Permitted solid fences are:~~

~~(A) **HEDGE.** A row of dense, closely spaced living plant material composed of vines, trees, shrubs, bushes or combination thereof.~~

~~(BA) **SOLID FENCE.** A fence designed to inhibit public view and provide seclusion and, when viewed at right angles, having more than 50% of its vertical surface area closed to light and air.~~

(1) **BOARD ON BOARD** or **ALTERNATING BOARD ON BOARD.** A fence constructed of vertical wood boards or other natural and permanent material with one-inch nominal size boards between, or upon, a frame of 2-inch nominal members and 4x4 nominal posts.

(2) **LOUVER** or **VENTILATING FENCE.** A fence made of a series of wood slats or other natural and permanent placed at an angle or positioned so as to provide air but to deflect light perpendicular to its vertical plane.

(3) **SOLID PICKET FENCE.** A fence made up of upright one-inch by two-inch nominal wooden boards or other natural and permanent material, that abut one another, side by side with no openings. The top of the fence may be pointed or blunt.

(4) **STOCKADE** or **PALISADE FENCE.** A fence constructed with a row of large pointed stakes of wood or other natural and permanent material placed upright against each other having more than 50 percent of the area of its vertical plane closed to light or air.

(5) **WALL, STONE** or **BRICK.** A solid fence constructed of stone or brick.

HEDGES IN FENCE CODE
Proposed Changes: Blue

(~~CB~~) **PARTIALLY OPEN FENCE.** A fence designed to offer a vertical, but not totally blocked, visual separation. This fence is used where a low level of screening is adequate to soften the impact of the use or where partial visibility between areas is more important than a total visual screen. Partially open fences include:

(1) **PICKET FENCE.** A partially open fence made of upright wooden poles or slats. This fence may be an open fence if the space between the vertical boards is greater than the width of the boards.

(2) **ARBOR or TRELIS.** A fence of latticework used as a screen or as a support for climbing plants.

(~~BC~~) **OPEN FENCE.** A fence constructed for its functional, ornamental or decorative effect and, when viewed at right angles, having not less than 50 percent of its vertical surface area open to light and air. Permitted open ornamental fences are:

(1) **SECURITY or INDUSTRIAL FENCE.** A fence made with metal wire having sharp points, barbs, edges or other attached devices designed to discourage physical contact along its length.

(2) **CHAIN LINK FENCE.** A fence usually made of metal, loops of wire interconnected in a series of joined links and including vinyl, plastic-coated or painted varieties.

(3) **ELECTRIFIED FENCE.** All fences or structures, with a device or object that emits or produces an electric charge, impulse or shock when the same comes into contact with any other object or any person, animal or thing, or which causes or may cause burns to any person or animal. So-called wireless or radio controlled fences that utilize radio signals and control collars are excluded from this definition.

(4) **SMOOTH RAIL, SPLIT RAIL, MILLED RAIL or CONTEMPORARY RAIL FENCE.** A fence constructed of narrow, whole or split, wooden timbers or boards placed horizontally between upright supporting posts. Smooth rail, split rail, milled rail or contemporary rail fences may have supplemental wire fencing or mesh attached to the interior of the fence. Such wire shall be painted or coated black. For the purpose of improved containment, the opening size shall be not less than 3" X 3" and designed in a horizontal grid.

(5) **WROUGHT IRON FENCE.** A fence constructed of metal, including aluminum, iron or steel, pipe, tubes or bar stock and having some type of decorative features or design. Wrought iron fences shall not have pointed ends exposed but may have finials with blunt ends.

(6) **RADIO CONTROLLED FENCE.** The use of insulated wire (typically low voltage and located underground) to transmit a radio signal to a receiving device. Radio controlled fences are exempt from these regulations.

(7) **RETAINING WALL.** A wall composed of wood, stone, brick or other masonry material designed to hold back a portion of higher ground from a lower one. A retaining wall permits two elevation levels to be placed adjacent to each other with an abrupt vertical change between them.

(8) **ACCENT FENCE.** A fence that is used solely for ornamental purpose and does not enclose or partially enclose an area.

HEDGES IN FENCE CODE
 Proposed Changes: **Blue**

(Ord. 75-98, passed 3-20-00; Am. Ord. 28-09, passed 6-15-09)

§ 153.080 REGULATIONS ON USE.

(A) *Regulations - general.* Except as otherwise specifically permitted herein, no fence or wall shall exceed four feet in height. Supporting members for wall and fences shall be located so as to not be visible from the adjoining property unless the fence is designed such that the supporting members are identical in appearance on both sides of the fence or wall. No fence or wall shall be constructed in any platted no-build zone, conservation/no disturb zone, floodway, floodplain or drainage easement for any parcel or subdivision which would be detrimental to the public health, safety and welfare. All portions of the property shall remain accessible from outside the fence area by means of a gate or other opening.

(1) The fence, ~~or wall,~~ ~~or hedge~~ shall not be permitted to encroach upon public rights-of-way or easements or no build zones, conservation/no disturb zones. The fence, ~~or wall,~~ ~~or hedge~~ shall not be located so as to adversely affect the vision of drivers on the public streets or from driveways intersecting public streets.

(2) The height of a fence shall be measured from the established grade line to the highest point of the fence including posts and finials. The height of the fence may not be artificially increased by the use of mounding unless otherwise required by the zoning district regulations.

(B) *Permitted fencing.* Fences shall be permitted as follows, except as otherwise specifically permitted herein.

(1) *Open fences.*

(a) Open or partially open, (ornamental or decorative) fences shall be permitted in all zoning districts and shall be no greater than four feet in height above the established grade, unless otherwise permitted herein. The partially open or open fence may be located only within the buildable area of the lot. These fences may be used to enclose the entire perimeter of the rear yard if the total lot area is greater than 30,000 square feet.

(b) Partially open or open accent fences shall be located within the buildable area forward of the primary structure if limited to four feet in height and designed to only partially enclose an area. These fences are permitted forward of the building line along scenic roadways but cannot exceed three feet in height and serve only an ornamental purpose. Fences within the front yard shall be safely placed so as not to obstruct visibility at driveway or roadway intersections.

(2) *Solid fences.* Solid fences shall be permitted in all zoning districts only in rear yards. Solid fences shall be no greater than four feet in height, unless otherwise permitted herein, and shall not be used to enclose the entire perimeter of the property. Such fences shall be located within the buildable area of the lot and only be used to enclose a deck or patio. Solid fences shall not be located within a required side and rear yard and shall be of an approved type. Brick, stone or masonry walls are permitted forward of the building line along scenic roadways but cannot exceed three feet in height. Fences within the front yard shall be safely placed so as not to obstruct visibility at driveway or roadway intersections.

PROPOSED ZONING CODE MODIFICATION

PZC 9/20/2012

HEDGES IN FENCE CODE Proposed Changes: Blue

(3) *Chain link fences.* Chain link fences shall only be permitted in commercial zoning districts. Such fences may not be placed forward of the primary structure and are restricted to side and rear yards. Such fences may be erected parallel to and on, or approximately on, the common property line to a height not exceeding six feet above the established grade. Permitted chain link fences shall be painted black or shall have a black plastic or vinyl coating.

~~(4) *Hedges.* Hedges shall be permitted in all zoning districts. Hedges shall not be located within any no build zone, conservation zone/no disturb zone, drainage easement, floodway, flood plain or other area which would be detrimental to the public health, safety or welfare.~~

(54) *Arbors; trellises.* Arbors or trellises shall be permitted in all zoning districts. Arbors or trellises, which are detached from the building, may encroach on a required side yard, side yard which abuts a street and forward of the structure provided that:

- (a) The maximum height is eight feet;
- (b) The maximum width is five feet;
- (c) The maximum depth is three feet and;
- (d) The surface of the arbor or trellis shall be at least 50% open.

(C) *Prohibited fencing.*

(1) Electrified, barbed wire, razor wire, and stockade fences are hereby prohibited in all zoning districts. This prohibition shall not be construed to prohibit electrified and/or barbed wire fences when used in conjunction with a purely agricultural use as defined by the Ohio Revised Code.

(2) Vinyl clad, plastic or pvc (polyvinylchloride) fences are hereby prohibited in all residential districts.

(D) *Other fencing.* The Zoning Administrator or designee may permit other fences similar in character and design to one or more of the permitted fences herein, upon application.

('80 Code, § 1309.04) (Ord. 75-98, passed 3-20-00; Am. Ord. 18-07, passed 4-9-07; Am. Ord. 28-09, passed 6-15-09)

§ 153.081 PERMIT AND INSPECTION.

Any fences which may be permitted shall require the issuance of a Certificate of Zoning Plan Approval after the same has been approved.

(A) Upon permit application, each property owner shall provide the following:

- (1) Name and address of the owner of the lot for which the permit is requested.
- (2) Name and address of the person, firm or corporation that will carry out the actual installation.

HEDGES IN FENCE CODE
Proposed Changes: Blue

(3) An overall plot plan including the shape and dimensions of the lot together with the location, material, height and location of all proposed and existing fences, potential visibility conflicts and the drainage flow across the lot. Section and elevation views of the proposed fence detailing its construction and method of fixture to the ground should also be submitted.

(B) The Zoning Administrator or designee may waive this requirement when the fence location is such that encroachment is not in question. Upon obtaining a building permit and constructing the fence, the property owner shall ascertain that the fence thus constructed does not deviate from the plans as approved by the Zoning Administrator or designee issuing permits and does not encroach upon another lot or parcel of land. The municipality shall furnish such inspection, as is deemed necessary, to determine that the fence is constructed in accordance with plans submitted for permit, provided however, that such determination by the municipality shall not be construed to mean the municipality has verified the fence is not encroaching upon another lot, nor shall it relieve the property owner of the duty imposed upon him or her herein.

(Ord. 75-98, passed 3-20-00; Am. Ord. 28-09, passed 6-15-09)

§ 153.082 MAINTENANCE.

(A) Permitted fences, walls, ~~shrubby, hedges~~ or structures shall be maintained in good condition, be structurally sound and completely finished at all times. Any grounds between such fences, walls, ~~shrubby, hedge~~ or structures and property lines shall be well maintained at all times by the appropriate property owner. Supporting members for walls and fences shall be located so as to not be visible from the adjoining property unless the fence is designed such that the supporting members are identical in appearance on both sides of the fence or wall.

(B) Normal repairs and maintenance. None of the provisions of this Code shall be interpreted to prevent normal repairs and maintenance or to strengthen or correct any unsafe condition of any fence.

(C) Nonconforming materials. Except that any maintenance that replaces more than 10% of the surface area of an existing fence, which has nonconforming materials, within a 12 month period shall require reconstruction of the entire fence with a material permitted by this subchapter.

(Ord. 75-98, passed 3-20-00; Am. Ord. 28-09, passed 6-15-09)

§ 153.083 COMPLIANCE REQUIRED; CONFLICTING PROVISIONS.

(A) Fences shall be designed, erected, altered, reconstructed, moved, anchored, positioned and maintained, in whole or in part, strictly in accordance with the provisions of this subchapter and building code provisions applicable to fences.

(B) If these standards conflict in any way with the standards in any planned development zoning text, then the most restrictive standards shall prevail. Standards in this section applicable to matters not covered in the planned development zoning text shall also apply.

(C) Notwithstanding any other provisions in this Code, in all residential districts fences erected prior to the effective date of Ord. 75-98 shall not be considered non-conforming structures and shall be permitted to be replaced in the same location and at the same or lesser height as existed on the effective

PROPOSED ZONING CODE MODIFICATION

PZC 9/20/2012

HEDGES IN FENCE CODE

Proposed Changes: Blue

date of Ord. 75-98. In addition, the replacement fence shall be of a material as provided in § 153.080(C). A Certificate of Zoning Plan Approval shall be required.

(Ord. 75-98, passed 3-20-00; Am. Ord. 28-09, passed 6-15-09)

RECORD OF PROCEEDINGS

DAYTON LEGAL BLANK FIC FORM 110 12-148

July 2, 2012

Held

20

Mayor Lecklider called the Monday, July 2, 2012 Regular Meeting of Dublin City Council to order at 6:30 p.m. at the Dublin Municipal Building. Council Members present were Mayor Lecklider, Vice Mayor Salay, Mrs. Boring, Ms. Chinnici-Zuercher, Mr. Gerber, Mr. Keenan and Mr. Reiner. Staff members present were Ms. Grigsby, Mr. Smith, Mr. McDaniel, Ms. Mumma, and Chief von Eckartsberg.

ADJOURNMENT TO EXECUTIVE SESSION

Mayor Lecklider moved to adjourn to executive session to discuss employment-related issues, specifically matters involving performance evaluations of various City employees; and to discuss matters required to be kept confidential under state law, including confidential law enforcement information and matters involving security arrangements/protocols.

Vice Mayor Salay seconded the motion.

Vote on the motion: Mr. Reiner, yes; Mr. Keenan, yes; Ms. Chinnici-Zuercher, yes; Mr. Gerber, yes; Mrs. Boring, yes; Mayor Lecklider, yes; Vice Mayor Salay, yes.

The meeting was reconvened at 7:00 p.m.

PLEDGE OF ALLEGIANCE

Ms. Chinnici-Zuercher led the Pledge of Allegiance.

ROLL CALL

Present were Mayor Lecklider, Vice Mayor Salay, Mrs. Boring, Ms. Chinnici-Zuercher, Mr. Gerber, Mr. Keenan and Mr. Reiner.

Staff present were Ms. Grigsby, Mr. Smith, Mr. McDaniel, Ms. Mumma, Chief von Eckartsberg, Ms. Crangall, Mr. Hammersmith, Mr. Langworthy, Mr. Harding, Mr. Hahn, Mr. Farman, Mr. Thurman, Mr. Gunderman, Ms. Ott, Mr. Ashford and Ms. Ruwette.

CITIZEN COMMENTS

Laurie Gyrko, 6301 Wynford Drive, Dublin stated that she is present to speak regarding trees on their property. Her husband addressed Council about the same topic five years ago. They moved to Dublin in 2004. In 2005, they planted Norwegian spruce trees along their back property line after receiving approval by City Forester Paula Chope. Her husband secured all necessary approvals from the City before planting the trees. They also checked with all of their neighbors about the planting, including the neighbors to the rear. Once the plantings of the 1.5-foot trees were completed, the neighbor at their back property line filed a formal complaint with the City's Zoning department based on the fact that the trees constituted a fence. Her husband spoke to Council about this matter and Council did not require them to cut down the trees. Now, five years later, another complaint has been filed by the same neighbor. They are now complaining that the landscaping constitutes a hedge and their major complaint is that it attracts too many birds and bunnies - describing the situation as "living behind an avlary." Ms. Gyrko noted that she gave the Zoning department permission to inspect the trees on their property. Some of the trees have not survived since the planting. They were informed by a letter from the City that they need to rectify the situation by August 1. The Code is very vague, and does not provide specific guidelines about the spacing of the trees. They have sent a reply to the City with some additional information. She is present tonight because she was told by the Zoning department that there is no enforcement done unless a complaint is filed. However, there are hundreds of properties in Dublin with trees that may constitute a hedge in the no build zone. To her, this seems to be selective enforcement in that they have been asked to rectify the situation, whatever that means. They were told five years ago that the matter would be referred to a Council Committee and that the Committee would discuss it and make a decision, but apparently, a decision was not made. She is asking tonight that Council discuss this matter and stated that the fence Code adopted in 2000 may need to be revisited. She does not want to cut down the trees, which are now 10-14 feet in height. This will be an economic hardship. The major

RECORD OF PROCEEDINGS

Held

20

issue noted in the letter sent by the neighbor was not about the trees, but with the birds they attract. If the City requires them to remove the trees, she plans to replant trees in her yard, and therefore, the number of trees on her property will not decrease. In addition, they live behind a neighbor who frequently complains and she is uncomfortable with these neighbors closely watching them. The trees have provided some security and safety for them. After hearing nothing from these neighbors for five years, she is not certain why they now want an open space to their yard.

Mayor Lecklider stated that he has had some contact with Mr. Gyrko in the last week. Did she or her husband contact the City today?

Ms. Gyrko indicated that they had a call from Brian Martin today and her husband returned the call. They were told that they could file an appeal, and they are now pursuing that process. Next week, they will meet with staff to learn about the process and then fill out the paperwork for the filing of an appeal.

Mayor Lecklider asked if the Gyrkos were provided with assurance that nothing needs to be done with the trees in the near term until this meeting occurs.

Ms. Gyrko responded that they were given until August 1 to rectify the situation. They have asked for an extension so that they can determine what the appeal process will involve. They were not granted any formal extension by the City staff.

Mayor Lecklider stated that Mr. Gyrko lives a block away from his residence and recently came to his home and shared an e-mail exchange that had taken place with the neighbors. Mr. Gyrko then came to his home on Sunday morning with the letter from the Planning Department regarding the fact that the landscaping has been determined to constitute a hedge and that there needs to be some remedy by August 1. Mayor Lecklider noted that he sent an e-mail last night to Mr. Langworthy and Mr. Martin and asked the Clerk to research some records on this topic. He had believed that the issue raised in 2007 was resolved. Once he received the minutes, it did refresh his memory with respect to what had occurred and how the matter was to be addressed. However, he remains somewhat confused with the status today with respect to the Code, what constitutes a hedge, and what is being enforced and not enforced.

Mr. Langworthy responded that this issue goes back several years. It involved a "no build" zone and fences are not permitted in such a zone. At the time, there was discussion from the complaining property owner that the plantings were done in such a manner as to enclose the property, which met the definition of a fence in the Code. At the time, staff reviewed the landscaping and believed it did not constitute a fence, as it was not solid and had not grown together. Staff did alert the property owner at the time that at a future date when the plantings grew close together, there could be an issue if they were not trimmed. The landscaping is now at that point as the trees have begun to grow together. Mr. Martin reviewed the Code and determined that the trees are more closely aligned to a hedge than a fence because they are a continuous row of vegetation. He indicated that the best way to address the issue was to have the trees not be continuous. The previous issue raised was related to the 50 percent opacity limitation for fences. But if it is determined to be a hedge, there is not an opacity issue – rather, it cannot be a continuous row of vegetation. Staff's intent was to work with the Gyrkos to have them break up the continuity of the plantings to create more of a landscape feature versus a hedge or fence. That is how the situation stands. Mr. Martin is out of the office today and tomorrow, so he has not been consulted regarding the latest contact from the Gyrkos.

Ms. Gyrko asked for clarification of "breaking up" the continuity, as one tree has died leaving a large open space and some of the plantings are not touching. What is the guideline for a hedge and its length? Can some of the trees be trimmed to leave space in between them?

Mr. Langworthy stated that there is no numerical computation established. For this reason, Mr. Martin offered to work with the property owner.

Ms. Gyrko responded that she was told he could come and evaluate, but then received a letter in the mail that the situation needed to be rectified by August 1.

Mr. Langworthy noted that is the standard letter sent out. He had asked that Mr. Martin contact the property owner and work with them to resolve the issue.

12-058ADM

Fence Code Amendment

RECORD OF PROCEEDINGS

Heid

20

Ms. Gyurko responded that is why she is concerned. Will this be an every year situation going forward, given the growth and change in the plantings? She would like some closure. Unless a neighbor complains, the other property owners in Dublin with similar plantings do not have to take these measures.

Ms. Grigsby stated that she was not aware of the recent activity regarding this issue. Staff will obtain all of the information and will work with the resident to resolve it. Staff will also consider granting an extension of time for the property owner to remedy the situation.

Ms. Chinnici-Zuercher recalls visiting the Gyurko property at the time the original complaint was filed five years ago. She, too, believed the issue was resolved, but will be interested in reading the minutes. Her recollection was that the City was not going to require anything to be done then or in the future for this property. In addition, it is inappropriate to respond to an individual complaint about a matter. Five years ago, the Dublin staff approved installation of these trees so it is not reasonable for the City staff to indicate at this time that they do not agree with the previous interpretation. All of this needs to be considered. However, she believes the Gyurkos should not have to make any modifications to the landscaping.

Mrs. Boring noted that she, too, believed that the issue was resolved. Her recollection was that the landscaping benefitted both property owners. Pine trees are used for screening and buffering throughout the City. In her opinion, if the City approved this installation five years ago, this landscaping should be grandfathered.

Ms. Grigsby responded that because she does not have all of the details, she recommends that Mr. McDaniel and Planning staff work to resolve the issues related to this. She will keep Council apprised of the progress in the resolution.

Mr. Gerber stated that this is a fair approach, but he does recall that this matter was discussed and resolved several years ago. There are trees throughout the City that have grown substantially and could constitute hedges. It concerns him that the Gyurkos will have to wait until sometime prior to August 1 to hear from the City on the decision regarding this matter. He would recommend at this point that the City rescind the letter.

Mayor Lecklider asked the Clerk to forward the records from the various meetings on this matter.

Mr. Langworthy stated that the Committee meeting occurred at the point that discussion was taking place about a general Zoning Code update. Staff believed at the time that a change to that portion of the regulations could be included in the Code update. However, the Zoning Code update did not go forward for a variety of reasons.

Mr. Reiner noted that his recollection of the discussion was that the landscaping added value for both property owners in terms of privacy. Since the City approved the installation of trees at the outset, his understanding from the previous discussion was that there would not be further steps taken. If a property owner had not secured City approval and had installed plantings with the intent to violate the Code, that would be a different matter altogether.

Mr. Langworthy stated that this direction is fine. Staff did not recall the end result of the last discussion. Staff can certainly call off any enforcement, if that is Council's desire.

Ms. Grigsby stated that, after consulting with Mr. Smith, if Council's direction tonight is as several Council Members have articulated, that is the direction staff will follow.

Vice Mayor Salay added that Council did discuss the fact that trees are used throughout the city as fences, hedges, and privacy screening and that was an accepted feature of the community. She recalls having that discussion with the Law Director.

Mrs. Boring pointed out that it is interesting that the City has long desired a high level of opacity for landscaping, screening, and mounding, yet now seems to be implying that the City does not desire such opacity for a property owner's landscaping. She is in agreement

RECORD OF PROCEEDINGS

Dublin City Council

Minutes of

Meeting

July 2, 2012

Page 4

DAYTON LEGAL BLANK INC. FORM NO. 101-03

Held

20

that this situation was reviewed five years ago and was determined to be acceptable. She would request a follow-up on this general policy matter to understand how this is being interpreted and enforced citywide.

Mayor Lecklider asked that the Clerk circulate the minutes to all interested staff as well. Staff can follow up if there is need for a Code amendment going forward so that this issue does not occur in the future.

Mr. Langworthy clarified that a Code amendment would be necessary so that the provisions could be enforced.

Pedro Weisleder, 7934 Caraway Avenue stated that he is present tonight to address Council regarding a situation with a neighboring property at 7926 Caraway Avenue. The owners have four dogs and the dogs have not been trained. Whenever the dogs are outside, they bark incessantly. This is tolerable during the day, but not when they let the animals out at various hours throughout the night. He has spoke to the Code Enforcement officer regarding the noise problems. The officer has visited the property on several occasions and left notices about this. Unfortunately, the problem continues to occur on a regular basis. In addition to the City of Dublin, he has contacted animal control and the park ranger for the Metro Park area behind their property. He has brought the issue to the homeowners association and the Association sent a letter to the property owner. The situation improves for a few days, but then reoccurs. He was told at some point that his only recourse is to contact Dublin Police, and he has done so on some occasions. Is there something that can be done or some additional assistance available to resolve this problem?

Mayor Lecklider asked what advice the Police Department has given to him.

Mr. Weisleder noted that the Police responded and went to the door of the property owner who then brought the animals inside.

Chief von Eckartsberg asked for clarification – did he contact the Police or Code Enforcement?

Mr. Weisleder responded that he has contacted both. Initially, he contacted Code Enforcement.

Chief von Eckartsberg offered to meet with Mr. Weisleder after the meeting. If dogs are barking excessively and generating excessive noise, that can be addressed by the Police. He is not familiar with the specifics of this case. If the animals are running at large, that is a separate issue, but that does not seem to be the case. He would be happy to discuss this further with Mr. Weisleder.

Mayor Lecklider asked what advice is given to a resident about this general situation.

Chief von Eckartsberg responded that it is best to contact the Police Department in such a situation. Code Enforcement is not staffed 24/7, as is the Police Department. They take calls such as this frequently. Typically, a warning is given and if the Police are called back in a short period of time, a citation is issued. Animal Control would only be involved if an animal is running at large.

Mr. Gerber asked Mr. Smith whether a citizen can also pursue private remedies for such a situation.

Mr. Smith responded affirmatively, noting that a property owner has the right to live undisturbed on their property and can retain an attorney to resolve this. Civil remedies are available to the property owner if the situation cannot be resolved by the government.

Mr. Weisleder thanked Council and staff for their suggestions.

CONSENT AGENDA

Mayor Lecklider noted that ten items are proposed for action on the consent agenda. He asked whether any Council Member requests removal of an item for further consideration under the regular agenda.

Hearing none, Mayor Lecklider moved approval of actions requested for the ten items as proposed on the consent agenda.

Mr. Gerber seconded the motion.

Vote on the motion: Vice Mayor Salay, yes; Mayor Lecklider, yes; Mr. Reiner, yes; Mr. Keenan, yes; Mr. Gerber, yes; Ms. Chinnici-Zuercher, yes; Mrs. Boring, yes.

**COMMUNITY DEVELOPMENT COMMITTEE OF
DUBLIN CITY COUNCIL**

Monday, June 23, 2008 - 7:30 p.m.

Minutes of Meeting

Ms. Salay, Chair, called the meeting to order at 7:30 p.m. in Council Chambers. Committee Members present were Ms. Salay, Mr. Lecklider and Mr. Reiner. Staff members present were: Mr. Langworthy, Ms. Readler, Brian Martin and Jeannie Martin.

Ms. Salay stated that the purpose of this meeting is the continued discussion of no build and no disturb zones.

Mr. Langworthy stated that this subject was identified over a year ago as a topic that needed to be revisited. Originally, the no build and no disturb zones effectively achieved their purpose, but today, many issues are being created by them. Although the purpose for these zones may be valid, a better way of addressing that purpose is needed. Consequently, staff is seeking direction from Council regarding a revision of the Code language for no build and no disturb zones to better meet today's needs. The presentation will be provided by staff members whose work involves this Code requirement: Brian Martin, zoning and landscape inspector, and Jeannie Martin, landscape architect.

There is also an interpretation issue regarding landscaping in side yards as they relate to the No Build and No Disturb zones, specifically if the screening effect of the landscape is interpreted to act as a fence.

Planning is requesting discussion on the following points and others as Council members wish.

- Have the No Build and/or No Disturb Zones fulfilled their original purposes?
- No Build Zone: With the exception of open and uncovered porches being allowed to encroach a minimum rear yard, has the combined effect of the Code revisions to fence and accessory structures requirements negated the need for designating No Build Zones? If so, could an established, consistent rear yard setback with appropriate accessory structure restrictions be utilized in its place?
- No Disturb Zone: Could the No Disturb Zone provide a greater level of protection for existing natural features by implementing it on an as-need basis to allow more effective enforcement? Should the definition be revised to create the ability to impose a conservation easement as a more standardized method to protect natural features? Should a more permanent and visible method of marking be used to identify the boundaries of a No-Disturb Zone?
- Landscape Fences: Should additional restrictions be added on the type, quantity and location of plant material along property lines to prevent a "fencing" effect?

If the Committee gives direction to do so, staff will prepare Code language that will address the issues and bring that back for additional discussion.

Mr. Lecklider indicated that the Ziegler family is present regarding a situation related to interpretation of the fence code. It is his understanding that the Committee will not be making a recommendation regarding that specific matter.

Mr. Langworthy confirmed that is the expectation. The Committee is asked to provide policy direction only, not a recommendation on a specific property matter.

Ms. Martin presented a PowerPoint. She stated that there is a long history associated with the no build/no disturb zones. In addition, several issues have arisen regarding privacy landscaping as it relates to those zones:

1. There tends to be a dual designation – no build and no disturb zones often overlap.
2. Improper conditions - an attempt is sometimes made to preserve things that should not be preserved.
3. Lack of owner awareness of where these zones exist.
4. Indistinct boundaries that vary from property to property and street to street. As a result, encroachments occur.

Mr. Langworthy noted that encroachments are occurring along the reserve areas behind the homes.

5. Inconsistent applications. Varying depths and boundaries are applied, and tend to vary lot by lot.

The original intent of no build zones was to protect the view sheds of the environmental corridor from accessory structures, such as sheds or fences. Changes in the Code regarding permitted locations for these accessory structures or fences have helped to achieve the original intent of the no build zone.

To discuss the issues, it is important to identify the difference between setbacks and yards. This can have a significant impact on the desired effect. A setback is an imaginary line that defines an area on a plat. A yard is a space that is defined once the building is constructed. There is a great difference between the yard, rear yard and the rear setback. Setback lines can be established to create the effect of a no build zone. Early establishment of no build zones were arbitrary lines on plats that varied in depth and location. Property owners had no way to locate these zones on their property, nor an easy way to locate their property lines. In many cases, the property line is established through boundaries of mowing and landscaping. As a result, the perceived property line and no build zone often do not match the actual. Through the years, the establishment of no build zones became commonplace on plats with little regard to the existing conditions of the development. In areas where the developer wanted to provide additional buffering to adjoining properties, landscape buffers were created. These landscape buffer zones were identified as being “improved with landscaping while preserving existing vegetation.” The homeowner association is acknowledged as the party responsible for maintaining the buffers. The inclusion of an additional zone such as this only adds to the confusion of the homeowners regarding what can or cannot be done in these areas. In some cases, a power line has been placed within the landscape buffer zone.

Mr. Martin stated that there are examples of these zones in Ballantrae. Typically, when a developer creates a new development, new development is adjacent to existing development. The buffer is installed between the two by the builder. The cost of maintenance of the buffer is the responsibility of the HOA, not the individual homeowner.

Mr. Reiner stated that the intent was to provide screening to protect homeowners' property values in the event a commercial development was to abut a residential zoning. For example, trash cans behind a shopping center would not be visible from the residential property if proper buffering is installed.

Mr. Langworthy responded that separation landscaping is not one of the issues that needs to be addressed.

Ms. Martin stated that this landscape buffer zone is different from the property perimeter requirements. It is unique to the development.

Mr. Reiner responded that if the function of the landscape row across the back of the properties is not to preserve an existing hedge row of trees or to protect the perimeter, what is the need for it?

Mr. Langworthy responded that this has been the issue. There are many situations in which there has been an indiscriminate placement of these zones without defining what they were attempting to protect.

Mr. Reiner noted that it may have been an attempt to screen the power line to make the properties more saleable.

Mr. Martin stated that in the instance of Ballantrae, it was provided as a buffer between Ballantrae and the existing residential development, Shier Lane Estates, which is not in Dublin. At the request of the Shier Lane Estates, the developer supplemented the existing trees to provide a more effective buffer.

Mr. Reiner stated that makes sense. This would eliminate some of the objections of the residents so that the developer could have his zoning approved. It does eliminate that type of conflict.

Ms. Martin showed additional examples of varying buffer zones within the Tartan development. Although the intent of early no build zones was to preserve natural features, the definition did not prohibit over-lot grading, drainage facilities, utility lines and utility structures from being located within the zones. That is evident within the Amberleigh North area. As a result, natural features that were preserved during development stages could be impacted during construction. While the intent of the zones is commendable, the location and identification of these zones is challenging. The varying depths and locations can be used in conjunction with setback lines. One resident's restrictions may be different from their neighbor's, which results in encroachments and violations. In newer developments, no build zones were established adjacent

to existing developments. In some developments, the no build zone and no disturb zones overlap one another creating dual designations. Identification and designation within these zones is very difficult, confusing what is permitted and what needs to be enforced.

No Disturb Zone

Mr. Martin addressed the field issues encountered. No disturb zones help designers and contractors preserve trees during construction. In one incident, a 30-foot zone was placed at the rear of a lot to preserve existing trees – but it is a foot from the owner’s home. On the first day of construction, the no build zone was violated because it was necessary to bring in equipment to dig the foundation and erect scaffolding to construct the house. The property owner also desires to build a patio at the rear of his house, so he has requested a change in the no build zone. Over the years, Planning staff has heard from many residents, builders, and real estate agents who are dissatisfied with the restrictions of the no disturb zones. The standards require that the area is not to be disturbed, but the intent of the zone was not to preserve noxious weeds or prohibit responsible horticultural practices like removing dead branches. Every year, staff is contacted with numerous requests for permission for encroachment into a no disturb zone. A common practice known as “state parking” involves removing weeds without disturbing the trees. Some residents request permission to do this; others do not. It is difficult for staff to either enforce no disturb zones that were cleared out without City permission or grant permission to some to do so and not others.

Mr. Reiner inquired the reason that zone was plotted on the property.

Mr. Langworthy responded that the reasons can vary. The clearest and best use of the no disturb zone is in an area where there were areas of significant natural growth that should be preserved. Even when there were small and separated groups of such growth, the zone was placed across the rear of all the lots. In some situations, however, it must have been the perception that a no disturb zone was required and it was placed in a bare area with nothing to preserve.

Mr. Reiner inquired if that was a City requirement.

Ms. Salay responded that when she served on the Planning and Zoning Commission, in nearly all cases a no build or no disturb zone was placed at the back of every lot. In some cases, it didn’t make sense. It was her understanding that the purpose was a tree protection fence during construction work. That does not consider the long-term practical effect for the property owners. In Ballantrae, some of the properties back up to Eiterman Road. Those property owners want to plant trees and other landscaping to buffer their yards from Eiterman Road, but there is a no disturb zone, which may contain poison ivy or left-over barbed wire.

Mr. Martin stated that the no disturb zone has provided an easier way to preserve the root zone of existing trees, which can extend 15-25 feet. In the long term, when the construction fence is removed, it creates a problem for the homeowners. They have built an expensive home and expect to have noxious weeds or undesirable vegetation along their property removed.

No Build Zones

Staff has received inquiries about the trend to install plants along the property lines. He displayed a photo of a property where the homeowners have installed evergreen trees along the property line to provide a buffer to enhance the privacy of the lots. The preservation of existing tree rows between lots is encouraged to provide a buffer. However, the installation of plants in a no build zone, which constitutes a hedge and serves the purpose of a buffer, is a violation. Per the fence code, hedges are prohibited in no build zones and in other areas, such as drainage easements. As indicated, these no build zones have been placed indiscriminately in the rear of every lot. There is a need for the City to provide clearer direction to the residents and landscapers regarding City spacing requirement for installation of plants. This will assist the code enforcement officers in enforcing the fence code.

Ms. Salay stated that installation of plants along property lines is a common practice.

Mr. Martin responded that a contradiction exists. The Code requires the preservation of existing trees along property lines as they serve as a buffer, yet the Code prohibits the installation of trees along property lines to serve as a buffer. The latter limits many property owners opportunity to have privacy and to increase their property value. There is, of course, still the need to avoid 6-foot high green walls along property lines. The City needs to more effectively communicate landscape installation requirements regarding plant size and spacing requirements and where no disturb, no build zones or drainage easements are located on their properties. The City does not review residential landscape plans that either the builder or property owner may install.

Mr. Lecklider stated that the contradiction is that property owners are installing landscape that in other areas naturally exists.

Mr. Reiner stated that one way to mitigate this problem is in the planning process and how the lots are platted. When a developer submits a plan where he has squeezed too many lots onto a plan, resulting in a square grid of homes, the City should reject the plan at submission. If a cartwheel effect is utilized, less screening is needed. If a thorough inspection occurs during the platting stage, less screening would be necessary. When houses are turned on the lots, less screening is needed. Sometimes no side or rear buffers are needed. Addressing the problem early in the process would be much easier for the property owners. Good landscape architecture and urban planning would do much to address the problem. By allowing the current platting practices to continue, the City is incurring additional expense for each homeowner who must later attempt to address their privacy or buffer needs. There is also a time factor involved with landscape life. If a more aggressive platting process occurred with the developers, many of these issues would be resolved.

Mr. Langworthy responded that would be difficult for staff as they are restrained by certain legal limitations as to denial of a plat. Earlier, during the design stage, many of the properties become either rectangular or long and rectangular, and then it is difficult to achieve a creative layout.

Mr. Reiner stated that is their excuse. The real problem is their efforts to squeeze an additional house or two into the plan, and to do so, they reduce the plan to small boxes on grids. If the City were to require residential developers to put in a cul de sac, orient the houses in different directions, and address the quality of life issues for the neighborhood during the lot platting stage, this situation would be greatly improved and many of these later problems eliminated. It is something Council should strive for. Dublin would be a nicer looking community and it would not be necessary for the homeowners to later fund their need for buffers.

Ms. Salay stated that the Planning staff could look into the opportunity to improve that part of the process. At this point, the question is how to address the existing problems with residents creating privacy buffers after development.

Mr. Martin stated that staff has dealt with two cases in which the homeowner had installed a row of evergreens along the property line to separate the two premises. Staff asked the property owner to move every fifth plant further into the property to break up the row, eliminating the solid hedge along the property line. One of the challenges of enforcing the fence code is the interpretation of the separation of premises.

Ms. Salay inquired if the City's involvement was complaint driven or the result of staff's observations.

Mr. Martin responded that a complaint was made.

Ms. Salay inquired about other similar cases that are occurring, where the neighbors do not object.

Mr. Langworthy responded that is part of the problem with complaint-driven enforcement. One complaint typically leads to others.

Mr. Reiner stated that a high percentage of the homeowners are probably violating the Code due to efforts to establish privacy along their side or rear yards.

Mr. Langworthy agreed.

Ms. Salay stated that quite often the City requires the developer to plant trees in the no disturb no build zone to buffer a property.

Mr. Langworthy responded that there is a real difference in how a natural group of vegetation or a created group of vegetation is considered. The City would penalize an individual removing natural vegetation but will not allow it to be installed. Although a tree row is not found on every lot, tree rows down the ends of the lots are common. Yet, all lots are treated the same. This has created the dilemma.

Mr. Martin stated that the calculation of opacity is also challenging. This often involves an annual inspection. Compliance with Code involves removing some of the trees or pruning others to open views. Staff plans to provide better education through graphics to help guide installation of plants.

Mr. Martin displayed a photo of a hedge installation along a property line that is adjacent to Emerald Parkway, a four-lane thoroughfare. There should be special consideration given when a residential lot is adjacent to a City right-of-way or a bikepath is located along a resident's side yard. This will be addressed in the Code revision.

Discussion:

- Have the No Build and/or No Disturb Zones fulfilled their original purposes successfully?

Mr. Langworthy inquired if the some of the previous Code revisions, particularly outlying fences along property lines and locations of accessory structures in rear yards eliminated the need for the no build zone designation. Could the no disturb zone be implemented instead on an as-needed basis for more effective enforcement? It probably would not be called a "no disturb zone." Staff will present some alternative methods to protect natural features that are more effective than this type of "blanket" treatment.

Mr. Lecklider inquired if the no build zones with respect to fences and accessory structures have addressed the building of sheds in rear yards.

Mr. Langworthy responded that the regulations regarding fencing and accessory structures effectively address the issue. Consequently, the no build zones are no longer needed. The setbacks have already been established. When the regulations are written they can specify what may occur in a rear yard or a rear yard setback. This accomplishes the same as a no build zone and applies to every lot equally. When the developer comes in to plat the lot, they already know what the setbacks are. They can describe the building outlook through the setbacks on the plat. The property owner will be aware of what can/cannot be done within the yard.

Mr. Lecklider inquired if that would be an effective way to address some of the view shed issues that have arisen in recent years.

Mr. Langworthy responded that they would accommodate that issue. That has less to do with a no build zone than a setback.

Public Comment

Steve Ziegler, 6294 Wismer Circle stated that he believes the fence code is very important. One of the reasons they selected their neighborhood was the no build zones, which would preserve the open space feel of the neighborhood. No fences are permitted there, but a wall or fence of trees can have the same effect as an eight-foot privacy fence. Mr. Martin stated the intent to preserve naturally occurring breaks. However, many of the trees that have been planted around perimeters do not have naturally occurring breaks. It is now their understanding that the Code prohibits such a wall of trees. That does not mean the homeowner cannot install vegetation to provide screening, but the screening cannot be so dense as to comprise a fence. They believe that is correct. The 50% opacity factor allows a reasonable amount of vegetation to be installed.

Mr. Lecklider requested clarification of his understanding regarding permitted fences.
Mr. Ziegler responded that his understanding is that fences are not permitted in the no build zones, but can be installed within the yard. In his neighborhood, there are also deed restrictions on the type of fencing permitted – split rail, not privacy fencing.

Mr. Reiner stated that Mr. Ziegler's objection appears to be to a linear type of barrier, not to a subtlety in the design.

Mr. Ziegler responded that simply moving every fifth plant, though, is not sufficient subtlety. It is still a wall or fence effect. What would work are islands of plantings with greenspace preserved between.

Mr. Reiner stated that would be a pod type of design.
Mr. Ziegler concurred.
Mr. Reiner noted that would be achieved by the design of the landscape architect.

George Gyurko, 6301 Wynford Drive stated that it was his property which prompted the issues cited by Mr. Ziegler. He went through the permit process, which was daunting, and believed he had placed installations correctly. It appears that was not the case. The way he planted his trees, he actually "lost" yard. If the City had told him he was limited to so many feet or a row, he would have done that. What is the definition of a row – how many hedges constitute a row?

Ms. Salay inquired what instructions he was given. He is permitted to fence the buildable area of his lot, so was he allowed to plant trees around the perimeter of the buildable area on his lot, and essentially fence it with green material?

Mr. Martin stated that the fence code prohibits hedges within no build zones, and a large portion of Mr. Gyurko's back yard is a no build zone. It was indiscriminately placed with no specific parameters, and it was difficult to determine the lines of the no build zone. Outside of the no build zone, in the buildable area, hedges are permitted.

Ms. Salay inquired the definition of a hedge.
Mr. Martin responded that it is a row of closely spaced plants -- either vines, shrubs, or trees.

Mr. Lecklider stated if the homeowner planted arbor vitae within the buildable area, it could be three-sided.

Ms. Salay inquired what instructions he received.
Mr. Gyurko stated that he submitted the design to Ms. Chope. The design provided for a tree every 8-10 feet around the perimeter with trees along the side and flat across the back. He indicated to her he would come at least 10 feet inside the property line to permit growth that would not interfere with the neighbors' property. Ms. Chope contacted him within a couple of days and indicated that she has discussed his plan with someone in Planning. She told him this

plan was OK, and he took that on good faith. If he received different instructions, he would have followed them.

Mr. Reiner stated that it is difficult for the homeowner to learn where those lines are. It could cost them \$1,200 – \$1,400 for a quick survey.

Ms. Martin stated that in many cases, it was an arbitrary lane with no way to define those lines while in the field.

Mr. Reiner stated that it should be defined on the plat.

Ms. Martin stated that she is not certain if that occurred with earlier subdivisions. They tended to define these zones with random lines with no purpose. Recent plats are more definitive, specifying the number of feet from the property line. She does not believe that information is included with a mortgage survey.

Mr. Reiner responded that it should be provided; it is important information about the property.

Ms. Salay noted that many people are aware of the City's fence code and would not consider building a fence or deck without City approval. They would probably assume, however, that they could install trees as they wish on their property. Prior to her service with the City, it would never have occurred to her to seek permission to plant trees on her property.

Mr. Lecklider stated that he has observed trees along rear property lines that are being set as far back as possible to preserve a larger play area. The homeowners are not aware of a need to consider a no build, no disturb zone.

Ms. Salay stated that residents want to have the maximum usable area of their lot.

Mary Ziegler, 6294 Wismer Circle stated that she called the Forester regarding the issue occurring behind their property. Their neighbors indicated they were planting a line of trees and that they had obtained City approval. They anticipated 3-4 trees. When installed, there were approximately 30 trees on each side along the property line. Ms. Ziegler requested an explanation, stating that this appeared to be a violation of City Code. The Forester was stunned at the number of trees that were installed. There appears to be a miscommunication occurring. Perhaps some incorrect information was provided. They contacted Mr. Martin to determine if the City could remedy the situation. They also offered to invest in some screening at the rear of their property to assist in providing appropriate screening that would create a wall. She suggested that the Committee members visit a property which contains a wall of spruce trees and then picture that wall on three sides of the property. A straight wall of spruce trees grown together will change the character of that yard completely. They are not at all opposed to screening, but object to the idea of a 50-foot enclosure around the back of their yard. They would be happy to work with anyone regarding screening.

Mr. Lecklider stated that staff provided examples of two views – an obstructed view and an open view. During his previous service on the Planning and Zoning Commission, the Fence Code was

adopted. There was a significant focus on fencing issues at that time. He recalls that the effort was more on preserving the view shed than privacy screening. However, if he were asked to choose between the open view and the obstructed view, he would choose the obstructed view. Ms. Salay stated that she would as well. When a beautiful, \$400,000 home is built on a property, that owner wants to have a usable back yard with some screening from their neighbor.

Ms. Salay inquired if Mr. Reiner remembered the intent of Council when the Fence Code was passed.

Mr. Reiner responded that the purpose focused more on preserving common greenspace and also landscape privacy. The problem with the current issue is the homeowner may have inadvertently violated the no build zone. He also apparently sought and received permission for that plan. Finally, there is a problem with the plan, which is lacking in design. It is a solid line of one species. There may have been some poor design with no variation in materials.

Ms. Salay stated that she does not know how the local government can regulate that issue or require property owners to "mix up" their species. This could create a problem for Planning staff.

Mr. Langworthy stated that Planning does not review individual, single family home landscape plans. Even if that did occur early in the Planning process, there is no guarantee something would not alter it.

Mr. Reiner responded that he does not believe the City wants to go that direction. In America, the individual's property is their domain. He believes the City acted in good faith in creating no build zones to preserve trees, etc. There is a need to be more careful in the platting process.

Ms. Salay stated that could certainly be done. She will now be more careful in her review of the plats when they come in, and the Planning and Zoning Commission will be instructed regarding this need as well. Regarding the discussion question, her response is that she does believe they fulfilled their original purpose.

Mr. Reiner inquired what improvements staff believes should occur. Although the zones may not have been enacted perfectly, that would be the result of poor planning, which could be addressed going forward.

Mr. Langworthy responded that staff believes the no build zone is no longer necessary. The greater issue is with the no disturb zone. If Council could devise a better enforcement plan that would be applied where it really should be applied, that would be helpful.

Ms. Salay inquired where staff would recommend portions of the Code be amended?

Mr. Langworthy stated that staff recommends the following be provided:

- Site preservation requirements. Currently, there are no provisions in the Code prohibiting someone from clear cutting their property. The Code needs to address this.

Mr. Reiner inquired if this could also be designed to protect the view shed. For example, Avery-Muirfield Drive was attractive when it was young and lined with pine, spruce and deciduous

shrubs. The original concept for Dublin was to create a community that was always green and beautiful. Now, the trees have aged, they've been "limbed up" and the view is not attractive. Most homeowners have not taken the responsibility to maintain that green screen.

Ms. Salay inquired if he is suggesting that the homeowner or the homeowner association be required to maintain the original buffers.

Mr. Reiner responded that the question is how can site preservation requirements be improved to include the maintenance of the buffers so they are not "limbed up," and whose responsibility would it be – the City's or the homeowner's.

Mr. Langworthy stated that the requirement to maintain buffers is already in the Code, although the quality thereof is not really addressed. Staff could work on language to address that in the Code.

Mr. Reiner stated that these issues are effectively addressed only in the planning stage. Trying to achieve the buffer with vegetation with a limited lifespan is a problem. When the vegetation dies, the view is altered. There is a need to advance the City's planning to a point where this problem is mitigated. The only permanent resolution is to push the houses back. This would necessitate reducing the number of houses, then constructing earth berms and planting them.

Mr. Langworthy stated that staff would give this consideration as well. The site preservation refers to an undeveloped site for which no application has been submitted – that is the one they want to protect.

- Improve plan submittal requirements to better identify natural features. A more precise description and plan should be submitted for what actually exists on a property. Presently, the only detail provided is a tree inventory for the tree waivers.
- Have a natural feature setback for those features identified as valuable. That would be more than a protection for the tree root zones. It would also be protection of water bodies and features they don't normally provide protection for.
- A vegetation strip requirement for natural bodies of water that aren't in a stream corridor protection zone, rather than permitting mowing to the stream edge. This would improve the water quality and reduce run-off.

Mr. Reiner stated that is a riparian corridor zoning. Previous attempts have been made to provide this for Dublin with a concept from the state of Virginia. The language is already written. They made an attempt to implement it a few years ago, and received a negative response from the development community. This would probably be a good method of protecting the water shed.

Mr. Langworthy stated that due to the popular "green" programs today, it might be a good time to resurrect this effort.

Mr. Reiner agreed. Today, there is more advanced awareness of water quality issues. There is a need for a green shed between the water and the edge.

Mr. Langworthy responded that he has written a number of watershed protection measures, and this one is basic to any watershed protection measure.

Mr. Reiner stated that he concurs. It is time for this to happen.
Ms. Salay expressed concurrence.

- Conservation easements. Staff believes that is a more effective method than a no disturb zone to preserve areas with natural features large enough to warrant it.

Ms. Salay inquired if this would apply strictly to new development.

Mr. Langworthy responded that for the most part it would apply to new development. In some existing neighborhoods, it might be possible to retroactively add a natural feature setback and a vegetation strip requirement, perhaps with an amended final development plan in the vicinity of those features.

Mr. Langworthy stated that he has not yet prepared the language for the recommended Code changes. They first are seeking general policy direction regarding staff's proposal, which is essentially a question of whether it is possible to effectively protect what is now a no build zone through other means that are more enforceable and easy to administer.

Ms. Salay responded that she would support that idea. As a Council member, she has experienced frustration with no build and no disturb zones issues. Ballantrae, in particular, comes to mind. There is a forest with poison ivy, their yards back up to Eiterman Road, and there is barbed wire at the rear of their properties.

Ms. Salay asked how staff would revise the language if directed to do so by Council.

Mr. Langworthy responded that he agrees with Mr. Reiner in that this subject should be addressed in the initial stage. Had these provisions been in place, it would have given staff a much better idea of where these things need to be addressed. In addition, there should be something better in terms of tree preservation than what exists today. However, writing better regulations may not make the enforcement work easier for staff. Some regulations may become more difficult to administer, but they would be easier for the homeowner to deal with.

Mr. Lecklider stated that he agrees with the need to be consistent with homeowner expectations. He referred to question #4 -- should privacy landscape fencing be permitted in a no build no disturb zone. If Council members as a whole concur that: (1) adequate Code sections are in place; (2) there is no longer a need to rely on a no build zone; and (3) the no disturb zone would be used when warranted, then he would support some allowance be made for some amount of privacy landscape fencing in the no disturb zone. It is a homeowner expectation. If some plant materials are defined as fencing, yet are not allowed beyond the building setback, he does not believe that meets homeowner expectation.

Mr. Reiner summarized that if Mr. Lecklider is stating that it should be possible for homeowners to augment existing areas of vegetation or create them, he considers that fair. Homeowners would expect that.

Ms. Salay stated that she agrees. Typically, homeowners want to do additional landscaping and enhance their privacy. Although some homeowners want to keep their yard open and their view unobstructed, the majority of homeowners prefer privacy in their back yard and they want to maximize the ability to use their yard as they desire.

Mr. Lecklider clarified that his suggestion does not, however, include a hedge.
Mr. Langworthy noted that the opacity requirement is still in place.

Ms. Salay inquired if a hedge is not permitted, what plants would be permitted.
Mr. Langworthy responded that staff would develop this information and provide it for the next discussion. As Mr. Reiner indicated, although staff cannot specify a design, it is possible to require that some things do NOT occur.
Mr. Reiner noted that would include the use of one single element to define the space.

Ms. Salay stated that, in effect, Dublin will not have privet hedges.
Mr. Reiner responded that at one time, those hedges once defined many lovely Victorian houses. They were popular.
Ms. Salay concurred.
Mr. Langworthy noted that they were only recently required in the Tartan Ridge development.

Ms. Salay stated that, personally, she does not object to a homeowner planting any tree, privet hedge or arbor vitae on their property to protect their view shed. In her opinion, if someone wants to plant trees on their property, they should be permitted to do so. She does not have a problem with any green, living fence.
Mr. Lecklider concurred. There may be developments where the City would still want the opportunity to utilize a privet hedge. It wouldn't be desirable to disallow that element.

Mr. Reiner stated that discussion about design is a subject similar to art -- hard to define. He does not believe the City can regulate the elements used, unless the City is doing review of individual plans. That review would create a significant burden on homeowners. Government becomes onerous when it attempts to regulate residents' lives to that extent.

Ms. Salay responded that the City's fence code was designed to regulate the type of fence, where it could be located, and to maintain a view shed in the neighborhood. That has been accomplished with those regulations. She is less concerned about the appearance and view shed of a green, living fence.

Mr. Lecklider stated that Mr. Reiner has pointed out that unless the City requires professionally designed landscape and a review and approval process, it is not possible for the City to control

the plant elements. How, then, would staff's proposed plan be implemented? How will residents be aware of what is permitted and what is not?

Mr. Langworthy responded that no specifics have been drafted, but a big component of the plan will be education. Staff has done a good job communicating the regulations to the community, but if a change in direction is made, a more in depth educational effort will be needed, including use of the City's website and working with civic associations.

Mr. Reiner stated that he agrees with everything else discussed, but will withhold judgment on this portion. Attempting to regulate what constitutes good screening and good landscaping for others is difficult. Homeowners do not have professionals to help them decide their view shed.

Mr. Langworthy stated that it may simply be a case of "less is better."

Ms. Salay that the situation for one resident can differ in many ways from that of another. It is preferable for the City not to attempt to regulate so many individual situations. She agrees with the wisdom of less is more. For future development, some direction could be provided with deed restrictions. People can choose to buy in neighborhoods where privet fences or iron fences are the expectation, or they can select another environment in which they might feel more comfortable.

Mr. Lecklider stated that deed restrictions tend to ally some homeowners against other homeowners, an unpleasant situation.

Mr. Langworthy noted that a deed restriction is, however, a means of notification. It is education more than it is enforcement.

Ms. Salay noted that the full Council and the general public will be interested in the development of this plan.

Mr. Langworthy inquired the Committee's direction in proceeding.

Mr. Reiner stated that the green initiatives discussed tonight are valid and should be included. Also, the new focus should move from the marketing aspect of the land to an emphasis on the preservation of that which is good and viable for the community.

Mr. Lecklider suggested that Planning staff develop a draft plan for review by the Community Development Committee.

Ms. Salay concurred. Council will have the benefit of these minutes in the interim, and when a draft is ready for Committee review, other Council members can attend the meeting, if they desire. A study session would be an excellent forum, but there are only two more study sessions remaining this year. August and November are reserved for budget review. What is staff's anticipated timeframe?

Mr. Langworthy stated that this will take some time to develop. It will involve a great deal of detail. Staff will inform the Committee when it is ready. It is of great interest to staff, and they will keep it moving forward.

Mr. Lecklider summarized that the other Council Members should review the minutes of this meeting, but it may be some period of time before the topic comes back to the Committee. When the next meeting is scheduled, all Council members will be welcome to attend that discussion.

The committee thanked staff for the time and effort devoted to this preparation.

Mr. Reiner inquired if the landscape architecture staff is involved with the day to day review of the plans submitted. Although he understands the desire of the developers to maximize their profit, the City would do better to deny approval of some of these bad layouts of tract homes at the onset -- with the goal of improving and protecting the quality of life of its citizens. The developers will object, but it is necessary if any upgrade of the process is to be made.

Ms. Martin responded that is the task of the design development team, which includes Mr. Gunderman, Mr. Phillabaum and herself. They try to meet with the developers prior to submission of an application. They work with them to develop a layout that meets the City's requirements.

The meeting was adjourned at 9:15 p.m.

Deputy Clerk of Council

Dublin City Council and from the hotel/motel tax endowment. He applauded Council for supporting the arts, both directly and indirectly.

SPECIAL PRESENTATION

- Loaned Public Art Program - David Guion, Executive Director, Dublin Arts Council

Mr. Guion thanked Council and City staff for their support of "Titration" – an outdoor loan sculpture exhibition. He offered a personal tour of the sculptures in Coffman Park for those not able to participate in the tour on September 17. He noted that they are on time and on budget with Titration, thanks to the DAC Board, DAC staff, and City staff. At the end of 2007, the DAC will be gifting a work from Titration to the City of Dublin. He then introduced each of the works which are on display in the park, showing slides and describing them in detail.

He noted that the exhibition is receiving good publicity, with coverage in *Columbus Alive* magazine, *Dublin Life* magazine and as a feature story in Sunday's *Columbus Dispatch*. In order to decide which sculpture will remain in Dublin at the end of the exhibit, ballots are available to the public at the DAC, at the DCRC, at City Hall, at the DCVB, at the Dublin Library, in the newspapers, and online. Ballots will be collected from October 1 through October 31. He encouraged everyone to visit the park and view the sculptures prior to voting.

He noted that DAC has received a very positive response to the exhibit to date. They are already in the process for planning for Titration II in 2008. The Worthington Arts Council and the City of Gahanna have contacted them about modeling similar art projects.

Once the votes are tallied, recommendations will be made to the DAC Board on November 12, and the DAC will bring a recommendation to City Council on November 19.

Mayor Chinnici-Zuercher commented that it would be desirable to have sponsors for the works, in order to keep all of them in the community.

Mr. Guion responded that is correct, as it would enable keeping all five versus two sculptures in the community permanently.

Mayor Chinnici-Zuercher asked if the sculptures, once dedicated to the City, will remain in their current location.

Mr. Guion responded that is something that staff and Council must decide.

Mayor Chinnici-Zuercher thanked Mr. Guion for the presentation, adding that this is a wonderful opportunity for the community to be engaged in the public art process.

CITIZEN COMMENTS

Wallace Maurer, 7451 Dublin Road noted:

1. As Council is aware, he is trying to "get at" Sophie Ryder, the sculptor of the Dancing Hares at Ballantrae. He thanked staff for the information sent to him about the sculptor. She is a person of tremendous artistic ambition and unremitting in her art. She has worked so hard with the materials in her sculptures that she has destroyed her fingerprints. He is trying to verify all of the things Ms. Ryder was aware of, and he is not certain if she was aware of the setting of the sculpture.
2. In terms of "marketing one's soul," a few days ago he received a phone request for permission for a political yard sign on his property. He is generally opposed to yard signs because they are not informative and there is no dialogical argument or debate. He did respond to the inquiry and told the party they could install a yard sign. He will allow any other candidate to put up signs as well. He believes the City should strive to have all candidates at several forums to be present where all citizens can hear them and they can hear each other.

George Gyurko, 6301 Wynford Drive noted that what brings him to Council tonight is the issue discussed at a previous meeting in regard to landscaping and zoning matters. He wants to ensure that the timeline of events and facts are known to Council. He stated the following:

1. He and his wife installed landscaping early this summer, after reviewing landscaping two doors down which appealed to them. He went to the City's website, under Zoning and Forestry, and the guidelines were vague. He then called the City' forestry staff to discuss his plans for landscaping. They did not return the call for eight days. He had the opportunity to visit the DCRC for an Arbor Day event, where the City had a table. He introduced himself to a staff member, who introduced him to Paula Chope, the supervisor. She apologized for not returning his call. He explained that his plan was to plant a series of Norway spruce trees around the perimeter of the property line, approximately 8-10 feet apart, at least six feet inside of his property to ensure they would not grow into a neighbor's property. He indicated that the Code was vague about the guidelines for such perimeter plantings. She was unsure about whether such plantings would constitute a fence, but indicated that the spruce trees were fine. She volunteered to contact the Planning Department for him, and would then contact him. Three days later, she called back and indicated the plantings as he had described, around the perimeter of the property line, approximately 8-10 feet apart, were not problematic. At that point, he marked the places in the yard for the tree plantings and went to each neighbor, including the one who has complained to the City, asked if they had concerns about the four-foot trees which would grow larger in the future, and whether they were too close to the property line. None of the neighbors indicated any concerns about the plantings.
2. Two weeks later, after working with the landscaper and the utilities, he planted the trees. One month later, he was notified by the City's zoning department that someone had filed a complaint. He spoke with Mr. Martin of the zoning department. He advised him that he had received a message from Ms. Chope that the plantings in the proposed locations were approved by the zoning department. Mr. Martin contacted him and indicated that because the trees had not grown together, they would not constitute a fence. He asked Mr. Martin if there was anything further he should do, and Mr. Martin advised that there was nothing to be done at this point, as it was not considered a violation. He then went in person to Ms. Chope and asked her if she recalled his case, which she did. He told her that she was unaware of any violation, due to the fact the zoning department indicated it was permissible. He asked Ms. Chope to contact the Zoning department to determine the person in Zoning she had spoken with.
3. Another month later he received a card in the door, indicating that the plantings were now considered a fence and not a hedge. He spoke with Mr. Martin again, noting that he received approval from the City via Ms. Chope and that he relied upon that information.
4. When he received a mail notification, he contacted Vice Mayor Lecklider, his ward representative. They met and discussed the matter.
5. Following his mail notification that he was in violation, he contacted Mr. Martin who indicated it was in error and should not have been sent. He assumed the issue was over, until he viewed Council discussing the matter at the last meeting.
6. He emphasized that if he had been told that he would be in violation of Code, he would not have planted the trees. He works in the law enforcement profession, and it disturbs him to think that he is considered to be breaking the law.

He offered to respond to any questions.

Mayor Chinnici-Zuercher thanked Mr. Gyurko for coming to Council and sharing his assessment of the situation. The larger issue of the need for Code clarification has been referred to the Community Development Committee of Council. He can provide input at that meeting if desired.

12-058ADM

Fence Code Amendment

Vice Mayor Lecklider clarified for all present that his understanding of what was referred to Committee was the overarching issue of the Code as it presently exists, and whether revision is warranted. His understanding is that Mr. Gyurko's specific situation will be addressed separate from that.

Mr. Langworthy noted that there are a wide range of issues associated with this, including no disturb and no build zones. These matters will be considered in the report to be provided by staff for the Committee review. He thanked Mr. Gyurko for his patience and willingness to work with staff.

Mr. Smith stated that with respect to Mr. Gyurko's property and the situation as it exists today, the Law Department has made a determination that there is no violation of the Code. Council will address the larger issue of clarifying the code in the future through the Committee system.

Mayor Chinnici-Zuercher summarized that Mr. Gyurko's situation is therefore completed as far as the City is concerned and he is not in violation of Code.

Mrs. Boring thanked Mr. Gyurko for explaining his efforts to seek input and approval prior to planting.

STAFF COMMENTS

- Washington Elementary Update

Mr. Hammersmith provided background information regarding the school planning and the efforts to create the safest environment possible for pedestrians and motorists. Since the opening of the school on August 22 by Hilliard City Schools, staff has received neighborhood and parent concerns regarding signs, pavement markings, speeds and traffic control along the recently completed section of Eiterman Road, adjacent to the school. He reported the following:

1. The City has been working diligently over the past few weeks with the Schools and residents to ensure the safety of all students and parents walking to and from school.
2. At the time of the initial concerns expressed by the parents and residents, staff learned that there were no crossing guards at either the Ballantrae Place or the Dalmore Lane intersections with Eiterman. This was a consistent concern raised by parents. Staff was not aware that crossing guards would not be present on opening day of school and would not be provided.
3. Tonight's report is in follow-up to the August 30 update to City Council. Since that time, Engineering and Police divisions have been working proactively with the Washington elementary staff to ease the transition of the school opening, with focus of the efforts on education and enforcement campaigns. He credited Principal Jennifer Wash for her cooperative efforts.
4. During the school planning, careful consideration was given to the site layout and driveway access points in order to create a safe environment for pedestrians and motorists. Buses were intentionally segregated from the vehicles entering and leaving the school, and were on a bus loop running around the outside of the school.
5. The single vehicular access point with Dalmore Lane was done intentionally so that pedestrians and vehicles were collected all at one point, in order to minimize conflicts. The bus traffic was segregated, as the school desired, to remove those potential conflicts.
6. The median design and landscaping were done to ensure it would not interfere with visibility and line of sight.
7. The City has provided school crossing signs at both crosswalks across Eiterman Road.
8. He shared slides depicting the students and parents accessing the school site, and the vehicle traffic patterns.

RECORD OF PROCEEDINGS

Minutes of

Dublin City Council

Meeting

DAYTON LEGAL BLANK, INC. FORM NO. 10149

September 17, 2007

Page 10

Held _____

20 _____

Ms. Salay suggested that perhaps the Schools Family Night could coincide with the tree lighting in future years, and everyone could attend the tree lighting and share family night.

Mr. Reiner added that the "Spirit of the Season" was a nice opportunity to honor those families who do such outstanding community service and who deserve to be acknowledged for it. He is sorry that it will not continue.

Ms. Brautigam agreed. However, the attendance and interest in that portion of the activities had decreased in recent years.

Mrs. Boring reminded staff that Council had discussion last year about the designation of the tree lighting. She referred to Mr. Reiner regarding this item.

Mr. Reiner recalled that Council had directed staff to refer to it as a "Christmas tree" in the promotions for 2007 and not a "holiday tree."

Mayor Chinnici-Zuercher noted that the Dublin community is more diverse than ever before, and it is important to be cognizant of those issues as well.

Mr. Reiner agreed, but believes a Christmas tree should be called exactly what it is. Mr. McCash indicated support for calling it a Christmas tree.

Wallace Maurer, 7451 Dublin Road:

1) Asked if Council plans to "get into the game" of the inclusive dates of the holidays? National mercantile pressure would lend itself to Labor Day plus one and the last day of the Super Bowl.

Ms. Brautigam commented that staff discussed internally moving the tree lighting to the Sláinte Thursday of November 15, but it was felt to be too soon before Thanksgiving. The desire is to have the lighting on November 29.

Mrs. Boring commented that it is important not to overlook the true meaning of Thanksgiving, which will be celebrated this year on Thursday, November 22.

2) Asked if Thanksgiving has a politically correct name.

Ms. Brautigam responded that Thanksgiving is not a religious holiday. It is a national holiday.

Mr. Maurer noted that, historically, Thanksgiving has tremendous connotations.

Ms. Brautigam clarified that it is founded by the U.S. government, and the religious connotations are not legislative.

Mr. Maurer continued.

3) What is the Historic Dublin Business Association's meaning of its holiday celebration of "Bri-H Holiday"?

Ms. Salay responded it is a shortened version of Bridge and High Streets.

Mr. Reiner moved to approve the staff recommendation, with the provision that the "holiday tree lighting" be identified as a "Christmas tree lighting."

Mrs. Boring seconded the motion.

Vote on the motion: Ms. Salay, yes; Vice Mayor Lecklider, yes; Mr. Reiner, yes; Mr. Keenan, yes; Mayor Chinnici-Zuercher, yes; Mr. McCash, yes; Mrs. Boring, yes.

Ms. Brautigam noted that late today, an e-mail was received regarding landscaping issues. Staff is prepared to respond, should these be brought up during Council Roundtable.

COUNCIL COMMITTEE REPORTS/COUNCIL ROUNDTABLE

Mr. Reiner noted that he was very impressed with the Dublin Methodist Hospital tour. The facility is fantastic, and is already receiving national recognition for its progressive plans for patient care. It is probably one of the premier hospitals in the entire country. In reference to meeting green requirements, this hospital would likely already meet the LEED standards. It is a wonderful addition to the Dublin community, and is already being described in New York as one of the most progressive hospital facilities in the country. He believes citizens will be very pleased with the facilities.

Mr. McCash:

12-058ADM

Fence Code Amendment

RECORD OF PROCEEDINGS

Minutes of

Dublin City Council

Meeting

DAYTON LEGAL BLANK INC. FORM NO. 101-08

September 17, 2007

Page 11

Held

20

1. Noted that the Infiniti dealer continues to park vehicles along the Tuller Road mound. He has raised this zoning code issue previously. He believes a progressive fine system is needed for repeat offenses. Between Byers, Infiniti and Hummer dealerships, such zoning violations are a continual problem on the weekend.

2. Reported he received an e-mail, copied to Council, on August 6, 2007 from a resident regarding a neighbor's yard plantings. The resident believes the plantings constitute a fence, but acknowledges there are different interpretations of the Code. At the time the fence code was modified several years ago, the intent was to prohibit the full enclosure of property because of safety concerns and to keep open vistas and views throughout the community. Hedges or living material consisting of trees, shrubs, etc. being closely spaced together were addressed. Apparently, a situation exists where trees have been installed which at mature height will enclose the yard, similar to a fence. A neighbor who had concerns with this asked the City to investigate this. Mr. McCash asked if there is Council support for modifying or adjusting the fence code to clarify the intent at the time. In talking to the resident who installed the trees, they took photos of other properties in Dublin with similar landscaping. Whether they were pre or post fence code changes is unknown. The other issue is with regular enforcement of zoning code ordinances and whether that is occurring. He is seeking Council's input on this.

Ms. Brautigam responded that both Mr. Langworthy and Stephen Smith, Jr. are present and both have been involved in this issue. They have pictures available as well, in case Council wants to discuss this tonight.

Mayor Chinnici-Zuercher stated that, based on Mr. McCash's comments, there may be a larger policy issue of the intent of Council at the time of the fence code change and whether something needs to be done to clarify the policy so that the intent of the ordinance can be achieved.

Mrs. Boring noted she is not certain that the issue can be addressed tonight, given the community wide nature of it. There are trees planted in her yard which are now grown and may not be in keeping with the intent of the fence code change. Mr. Keenan agreed, noting that the issue would need to be clarified – whether it is screening comprised of four trees, or completely surrounding the perimeter of a property. The language of the ordinance and its interpretation are clearly the issues.

Mr. McCash stated that is where the issue arises. It was intended for areas where it was the property owner's intent to enclose, not necessarily to screen.

Mr. Keenan stated that he would support revisiting the issue, but cautioned there is a need for very careful review.

Mr. McCash stated that perhaps a committee of Council or Planning Commission would be the appropriate body to review this.

Mr. Keenan asked about existing situations – is there a grandfathering issue?

Mr. Smith responded there are several issues involved. His suggestion is that the issues be reviewed at the committee level, and that staff provide information regarding the various matters – legal, zoning code, grandfathering, code dates. One of the issues is the size at planting versus the size when full grown. The Code at this time may not allow staff to enforce the provisions because of the way it is written. Council may choose to adopt a different policy. But in view of the many potential issues across the City, he would advise a careful review.

Vice Mayor Lecklider noted that he believes there are hundreds of potential violations under the current code, depending upon the interpretation. All of this review is separate from the individual situation.

Mr. McCash responded that the Code as written does address this particular situation of perimeter fencing. Obviously, there is a different interpretation out there. For all the other locations, whether pre or post zoning code changes, the ones that are post zoning code changes become an enforcement issue.

12-058ADM

Fence Code Amendment

RECORD OF PROCEEDINGS

Minutes of

Dublin City Council

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

September 17, 2007

Page 12

Held

20

Vice Mayor Lecklider pointed out that the issue becomes determining the date of installation of plantings in relation to the ordinance change.

Mr. Reiner commented in regard to the specific case, relating to a specified row of trees, when does it become actual perimeter screening? There are many subjective issues involved for each site. The ordinance when written was intended to keep common areas open and to provide open space in neighborhoods. In this case, however, a person simply installed a row of spruce trees. This is the first complaint he recalls regarding evergreen being viewed as an unfriendly screening.

Mr. Keenan stated that it is important to keep in perspective that this is not a regular problem.

Mayor Chinnici-Zuercher suggested referring the matter to the Community Development Committee.

It was the consensus of Council to refer the fencing matters and related policy matters to the Community Development Committee.

Mr. Reiner commented that the issue may be when a barrier or buffer of spruce trees constitutes a fence.

Vice Mayor Lecklider noted another question relating to no build zones and whether there is a necessity, going forward, to define no build zones in the Dublin Code. Mr. Langworthy responded that it has some impact, but the no build zone impacts only one portion of the lot and not as much on the sides, closer to the main structure.

Ms. Salay asked about a no disturb zone – does this mean no planting in the zone or not removing anything? This needs to be clarified as well.

Mr. Langworthy responded that both no build and no disturb zones will be clarified.

Mr. Smith added that some newer developments such as Ballantrae have patios extending to the lot line in the back, and the patio screening is on the lot line for these cluster homes. These did not exist years ago and should be considered.

Mr. McCash stated that Ballantrae is in a planned district, however, which can be modified as opposed to this example.

Vice Mayor Lecklider noted that all of this leads to people being unsure. They know what they observe in the community and do not necessarily distinguish what they see in one neighborhood versus another.

Ms. Salay responded that people would know they need a fence permit, but she does not believe it would occur to anyone to obtain a permit to plant trees.

Vice Mayor Lecklider stated his concern would be writing the code such that it eliminates to the extent possible any potential arbitrariness. That is the real challenge.

Ms. Salay asked how much lead time is needed by staff prior to scheduling of a meeting.

Ms. Brautigam responded that a month would be advisable in order to gather information and some photographs.

Ms. Salay stated that a meeting date will be set for the Committee to review the information.

Mrs. Boring asked if staff would prefer to update Council on the specific complaint at a later time.

Mr. Smith responded that he would prefer not to discuss an individual case at this time.

The issue has been referred to the Community Development Committee and a meeting date will be set for the review.

Mr. McCash continued:

3. At the Shoppes at River Ridge, there are stone sidewalk steps from Riverside Drive which run up and around the wall. He has observed that a handrail is not included on the stairs, and this is a Code requirement.

12-058ADM

Fence Code Amendment