

RECORD OF PROCEEDINGS

Held

April 10, 2017

Page 14 of 19

occurs. He asked about people who move next to a property such as this, where horses have been boarded for many years, and whether the new neighbors can file a nuisance claim for the existing non-conforming use.

Ms. Readler stated that denying the Agricultural District application for this land does not mean that Mr. Tobias will have nuisance claims filed against him in the future.

Mayor Peterson stated that he is hopeful that the business is very successful into the future. He struggles, however, with the standard that he must consider and apply in this deliberation.

Mr. Lecklider agreed with Mayor Peterson’s statements.

Mayor Peterson moved to reject the application, based on the reasons outlined in the staff recommendation.

Vice Mayor Reiner seconded the motion.

Vote on the motion: Mr. Lecklider, yes; Ms. Alutto, yes; Mayor Peterson, yes; Ms. Salay, yes; Vice Mayor Reiner, yes; Mr. Keenan, yes; Ms. Amorose Groomes, yes.

• “Tobacco 21” Age Prohibition Proposed Legislation

Ms. Readler reported that there have been local efforts to increase the age-of-sale for tobacco products from eighteen to 21 years of age. This movement, commonly known as “Tobacco 21” has spread across the country in recent years. Over 200 municipalities as well as the states of Hawaii and California have passed legislation to limit the sale of tobacco products to individuals over twenty-one. Legal staff has provided Council with a draft ordinance to consider.

Vice Mayor Reiner moved to direct staff to prepare this legislation and schedule on an upcoming agenda.

Ms. Salay seconded the motion.

Vote on the motion: Mr. Keenan, yes; Ms. Amorose Groomes, yes; Vice Mayor Reiner, yes; Mr. Lecklider, yes; Ms. Alutto, yes; Mayor Peterson, yes; Ms. Salay, yes.

• Status of Medical Marijuana Rules and Local Legislation in Ohio

Ms. Readler reported that on May 25, 2016, the Ohio General Assembly passed Substitute House Bill 523 (HB523). This allows individuals with a qualifying medical condition, on the recommendation of a physician, to apply to the State, and upon approval of their application receive an identification card allowing them to obtain, possess and use medical marijuana for the treatment of the specified condition. HB523 expressly affirms that municipalities may adopt restrictions, including prohibiting or limiting the number of cultivators, processors, or retail dispensaries of medical marijuana within their corporate limits.

Ms. Readler stated that it is staff’s recommendation that the City enact a ban upon medical marijuana cultivators, dispensaries, and processors within Dublin.

Mayor Peterson moved to direct staff to draft legislation to enact a ban upon medical marijuana cultivators, dispensaries, and processors.

Mr. Lecklider seconded the motion.

Vote on the motion: Mayor Peterson, yes; Ms. Salay, yes; Mr. Lecklider, yes; Mr. Keenan, yes; Ms. Alutto, yes; Vice Mayor Reiner, yes; Ms. Amorose Groomes, yes.

• Tree Preservation/Replacement Fee Waiver Policy

Ms. Husak stated that staff has researched this issue. A majority of the past waivers have been requested as stand-alone Council actions, and Council has granted a total of 22 waivers (six were approved prior to the adoption of the policy). Several developments, however, have requested relief from the tree replacement requirement through development agreements and through the planned district rezoning process by incorporating waiver language in the development text.

Ms. Husak stated that staff provided Council with four options in their packet for review and staff’s recommendation is for Council to consider a Code revision as well as updating

RECORD OF PROCEEDINGS

Held
April 10, 2017
Page 15 of 19

the current policy. Council could also request the input of their boards and commissions as may be appropriate or required.
Mayor Peterson noted he supports options two and three -- the policy update and Code revision, respectively.
Mr. Keenan stated that his goal is having consistency in this process.
Ms. Amorose Groomes stated in regard to the policy update that she would prefer to have criteria that is measurable and calculated. The Code revision is far more difficult because whenever there are changes to the Code, there are unintended consequences. She is supportive of both options, but does not believe they need to be done together.
Mayor Peterson moved to direct staff to propose a policy update on the Tree Preservation/Replacement Fee Waiver Policy with proposed Code revisions to follow. Ms. Alutto seconded the motion.
Vote on the motion: Mr. Lecklider, yes; Vice Mayor Reiner, yes; Mr. Keenan, yes; Ms. Amorose Groomes, yes; Ms. Alutto, yes; Mayor Peterson, yes; Ms. Salay, yes.

STAFF COMMENTS

- Recommendation to remove Basic Plan Review- Columbus Metropolitan Library, Dublin Branch (Case 17-002ARB-BPR) and Basic Plan Review- Library Parking Garage (Case 17-003ARB-BPR) from the table and schedule both items for hearing on the April 24, 2017 Council agenda

Mr. McDaniel reviewed the memo from Mr. Losinski, Columbus Metropolitan Library requesting that City Council schedule review of the Basic Plan at the April 24, 2017 meeting. Mr. McDaniel therefore recommends removing both the library and the parking garage items from the table and scheduling them for consideration at the April 24, 2017 Council meeting.

Mayor Peterson invited public testimony.

Jerry Kosicki, 4313 Wyandotte Woods Boulevard, Dublin stated he is a 30-year resident of the School District and a 22-year Dublin resident. The community should say "yes" to the new library project as proposed. Everyone agrees that the current library needs to be replaced. The current building is not historic and it will be replaced with another larger, but non-historic building. The scale is not out of line with what has been built at Bridge and High. Some of the building will be below the existing grade to minimize its height. The design is dramatic and imaginative and it will be great for that location. As people come over the pedestrian bridge from Bridge Park East, past the mixed-use building that is nearing completion on the west side, it will seem like the perfect fit. Cities grow organically, and the most loved factor of Old Dublin is its authenticity. It was built by people, building by building, over a long period of time. Those buildings are the records in time of when they were built and the people who built them and the way they lived. The proposed building will be an authentic representation of our time. Change is sometimes hard for some people to accept; others thrive on change. A major library is an important building in any city, as it stands as a monument to learning and human advancement through knowledge. Libraries throughout the world have been embracing contemporary design, because this has a unique ability to unleash human imagination and encourage creative thinking by young people and adults. Some say the building doesn't fit, but he disagrees. If there ever has been a community built on education and entrepreneurial and unconventional, out of the box thinking, it is Dublin. It is this creative spirit and get things done attitude that has attracted so many to this very remarkable, well-loved city that we proudly call "home." Repurposing the site of Dublin's first three-story school building for human learning helps renew the connection between this prominent historic spot within the community and the intense commitment to public education and maximizing human potential that the City and its people are all about. With a few partners, including Dublin residents Kevin Cooper, Andrew Graham and Kris Aldemir, they have created a petition at the change.org site in support of the proposed contemporary library. He invites the people of Dublin to sign on to this grass roots

RECORD OF PROCEEDINGS

Minutes of

Dublin City Council

Meeting

BARRETT BROTHERS - DAYTON, OHIO

Form 6101

Held

August 10, 2016

Page 12 of 20

Ms. Rauch responded that the number would decrease on a tree-for-tree basis instead of an inch-for-inch basis.

Ms. Alutto stated that is less than half of what would be required per Code. In her opinion, poor planning on the applicant's part does not necessitate Council approval of a waiver. She has no history in terms of tree preservation waivers, but to her, a tree is a tree, regardless of whether it is secondary growth. If they want to cut a tree down, they should pay the required amount.

Ms. Amorose Groomes stated that she is not inclined to support the waiver. There was a tremendous amount of insensitivity to the City's landmark trees. They are removing 12 landmark trees on 13 acres! Those were financial decisions they made when pursuing their layout. The removal of trees has a cost. They made the decision that the tree was not worth planning around, so she would be inclined to require they pay the fee for not planning around that tree.

Vice Mayor Reiner concurred. This all happened in the planning portion of the project. His observation when you fly over Dublin is that there is a certain sense of cadence and order that is not viewed in other cities from a plane. Though the intensive density of the project is not being discussed tonight, how the site drainage is addressed affects preservation of the existing trees. It may not be possible to save all the trees that they would like to save, so it will require some funding to replace them. Therefore, he is not in favor of granting the waiver. The other issue is that most of the City subdivisions have a certain amount of mandated greenspace, which is planned into them. That provides a quality of life for the citizenry. This proposal is comprised of building upon building wrapping around the subdivision. He does not believe this waiver should be granted.

Ms. Alutto noted that when you manage by exception, you manage yourself into a slippery slope.

Ms. Salay stated that she is hearing opposition not just to this waiver but also to the tree preservation ordinance in general. This is why the legislation was created, which was prior to her service on Council. At that time, the City wanted to do its best to ensure that trees lost during development were replaced in some way. It was designed to put developers on notice that when they develop a wooded site, or even an unwooded site with significant trees, they would either have to preserve them or pay to replace them. The waiver requested tonight does not have the votes for approval. Perhaps Council should also re-visit the tree preservation ordinance. This request is not that different from other tree preservation waivers that were approved over the years.

Ms. Readler noted that Council did adopt a policy regarding the criteria considered for a waiver. Council has the discretion to eliminate that policy going forward.

Mayor Peterson noted that he was disappointed with the criteria, which essentially states that if they make an attempt, that's good enough. Maybe that portion needs to be revisited.

Mr. Keenan stated that at this point, the issue is not with the trees, but with the cash penalty. The trees cannot all be accommodated on this site, but will be planted somewhere else. Presumably, the cash would be used to plant trees in other locations.

Ms. Amorose Groomes stated that the requirement is to plant the trees or pay a fee, but the request is for neither. The request is for a waiver – to neither have to plant or pay.

RECORD OF PROCEEDINGS

Minutes of

Dublin City Council

Meeting

BARRETT BROTHERS - DAYTON, OHIO

Form 6101

Held

August 10, 2016

Page 13 of 20

Ms. Salay stated that the waiver policy and the tree preservation ordinance recognize that a site like this would be so expensive to develop, that it could be rendered undevelopable. That being the case, would the City be over-reaching in regard to private property rights? The ordinance that was adopted 16 years ago was an attempt to address that concern. Therefore, it seems Council should re-visit the tree preservation ordinance and examine the options.

Mr. Keenan pointed out that the landowner has a right to develop their land; the City has a right to zone it. Balancing the two is difficult. The City has reviewed other proposals for this site. This proposal, in terms of height and other considerations, seems to be as good as anything previously proposed. The issue now, however, is with tree preservation, so perhaps Council does need to revisit the legislation. If the restrictions become too burdensome, no wooded sites would be developed.

Mr. Lecklider stated that is not a realistic outcome. Before reaching that point, the issue would be resolved in court. He would be careful saying that if a tree comes down, the developer would pay a penalty; if that is the case, the City does not have a tree waiver policy. If Council does not want to have a tree waiver policy, Council can have that conversation going forward.

Ms. Alutto stated that it is not that the requirements were not known – the developer was aware of them. When the development was approved, they were aware that if the trees had to be eliminated, they would need to pay cash in lieu of saving trees. However, if the City is going to waive their policy every time trees are removed, there is no point in having the policy. When you manage by exception, the door is opened and it is felt you have to go through it every time. Perhaps the tree preservation ordinance should be re-visited, as well.

Mr. Dugger stated that to provide some historic perspective, the event that triggered the City's tree preservation ordinance was the extension of Hard Road from Sawmill Road to Riverside Drive. The final plat was being reviewed by City Council, and someone asked about the impact of the road on a great big oak tree. No one knew its exact location, size or condition, so a consultant was hired to study the majestic oak tree. The report indicated that this oak tree was a witness to history; it was seven years old when the Declaration of Independence was signed. That was the catalyst for the tree preservation/replacement ordinance. Hard Road in front of Dublin Scioto High School was moved to avoid that tree, and that park was created to accommodate that very large tree. Tree preservation and replacement has been important to the City of Dublin since that time. The legislation that resulted was so groundbreaking and so onerous to developers that a safety valve was needed. In the event that the strict application of the City's legislation was such a hardship on the property, a mechanism would be in place to provide relief – the tree waiver policy. The policy was adopted in 2001 with established criteria. They were aware of the criteria. He does not believe that it is "management by exception." They believe that what they were doing was consistent with the tree waiver policy. There have been 17 tree waivers applied for and 17 tree waivers granted by Council that met the same requirement they are asking for today. Rather than management by exception – to be consistent, Council would approve this waiver request.

Ms. Alutto stated that she understands that they have worked with this accordingly. As the Mayor noted earlier, she also believes the criteria for an exception is unacceptable criteria. While she appreciates and respects what previous Councils have done, she believes she would feel as strongly about the previous requests as this one. She believes that if Council has a policy in place, waivers should occur few and far between, and with more stringent criteria than is in place today. Perhaps, the policy needed to change as the City grew, but that did not occur. She has received

RECORD OF PROCEEDINGS

Minutes of

Dublin City Council

Meeting

BARRETT BROTHERS - DAYTON, OHIO

Form 6101

Held

August 10, 2016

Page 14 of 20

much communication about this tree waiver from very concerned neighbors. The amount of money is less than half of what is required. She has too many concerns to be able to support it as submitted.

Ms. Amorose Groomes noted that Hard Road was routed around the old oak tree to preserve the "witness to history." This proposal covers the entire site with development. Nothing was moved to preserve anything.

Mr. Dugger responded that is incorrect.

Ms. Amorose Groomes stated that the site layout is very unimaginative and development covers nearly the entire site.

Mr. Dugger stated that buildings were moved, parking areas were moved, underground detention was added and permeable pavers were added. This site does not have an effective storm water outlet; that is one of the challenges. At the time Dublin Scioto High School was built, there was no accommodation in the storm water system for this property, which drains to Dublin Scioto High School. Therefore, extraordinary efforts were needed in terms of storm water management. What Council is seeing tonight is the result of nine months of work with staff and the Planning Commission to come to a creative solution to address all those factors. He disagrees that this is an unimaginative plan that just covers the site. The analysis that was presented to the Planning Commission and on which a successful vote was received demonstrates that the proposal is less intense and no more dense than other projects that Dublin has recently approved. He understands that with a first look at the plan, it does appear to have more density and intensity than is warranted, but that is what was approved by the Commission.

Vice Mayor Reiner stated that there is another aspect to all of this. The City of Columbus has announced recently that they need to purchase and plant hundreds of thousands of trees to reduce the heat island in the urban setting. An Ohio State professor recently wrote an article about this. In Dublin, we value the health of our citizenry and have done some very progressive things. Thirty-six years ago, Dublin wrote the first ordinance about street tree plantings and buffers. Dublin has had been visionary in addressing this issue. The benefit of trees to our citizens is very important, and Dublin is taking another look at that, as well, in view of the recent findings. To him, the effect of the reduction of the green canopy is paramount in this consideration.

Ms. Readler requested that the motion be an affirmative one for purposes of clarity.

Mayor Peterson moved to approve the tree waiver request.

Mr. Lecklider seconded the motion.

Mr. Dugger stated that there has been some suggestion that Council re-evaluate the tree replacement policy, which can present a hardship. Is that correct?

Ms. Readler responded that Council might revisit the policy to allow a waiver request to come before Council. Part of that would involve looking at the requirements of the ordinance. There is concern about this particular development meeting or not meeting the current criteria of the policy.

Mayor Peterson noted the intent of revisiting the issue and the policy would be to give clarity to developers and the neighborhoods.

Ms. Amorose Groomes stated that it would largely be focused on the criteria, the basis for the decision. Maybe Council will continue to allow the waiver process, but the criteria would be narrowed.

Mr. Dugger stated that if he had some understanding of where Council was going on this, it would be helpful. A negative vote is prejudicial in that process, but he is struggling with finding a reasonable resolution.

Mayor Peterson stated that the intent is not to cut off his options. However, there is a request before Council on which a decision must be made. Mr. Dugger can choose to withdraw the waiver request if he desires.

RECORD OF PROCEEDINGS

Minutes of

Dublin City Council

Meeting

BARRETT BROTHERS • DAYTON, OHIO

Form 6101

Held

August 10, 2016

Page 15 of 20

Mr. Dugger stated that in his view, the criteria are met, and that is the reason they pursued it. Because there is not a clear path as to what the new criteria might be, they must proceed with it.

Vote on the motion: Ms. Salay, yes; Mr. Lecklider, no; Ms. Amorose Groomes, no; Vice Mayor Reiner, no; Mayor Peterson, no; Mr. Keenan, yes; Ms. Alutto, no.

Mr. Keenan clarified that he votes affirmatively based on the request meeting the existing criteria. Any other action would be inconsistent with what Council has always done.

Ms. Alutto clarified that she votes "no" because she believes it is the right thing to do, and she is here to vote her conscience.

STAFF COMMENTS

Mr. McDaniel:

1. ~~Noted that the City intends to open the SR 161/Riverside Drive roundabout on Friday evening, weather permitting. There will continue to be intermittent closures and disruptions over the next month as the project is finalized. There will be a celebration of its opening on Saturday, August 13 at 10 a.m. at The Shoppes at River Ridge, and everyone is invited to attend. It will be held in the area of Wendy's/Montgomery Inn.~~
2. ~~Shared the City video on how to drive a roundabout, which is currently playing on the City's website.~~
3. ~~Planning staff has engaged Clarion Consultants to guide the City through a revisit of the Bridge Street District sign code. Council has been invited to provide input on August 24 at 11 a.m. at the 5800 Building. Council can also contact the Planning Division to schedule a meeting with the Clarion consultants.~~
4. ~~Reported that the COTA Park and Ride will open on Monday, September 5. More information will be provided as available.~~
5. ~~Thanked Council for their support of the Dublin Irish Festival, the community who attended the Festival, and the volunteers who made this event possible. Thanks also to staff who worked throughout the weekend, and the Events Administration staff who oversaw the Festival's execution and planning. It was great to have the Consul General of Ireland, Orla McBreen in attendance on Friday evening for the opening. A Japanese delegation from Mashiko also was in the City and attended the Festival. Early preliminary information shows that the City had about 100,000 attendees, slightly down from last year's 104,000. This was the second hottest weather for the Irish Festival since it has been tracked in 1995.~~
6. ~~Thanked the sponsors of the Festival. The sponsorship revenues were up 24 percent over last year. Onsite revenues were down by approximately 12 percent. Overall, the revenues will be down approximately 5 percent from last year. However, it remains the second highest revenue experienced for the Irish Festival. It was a successful event, and he appreciates everyone's support!~~
7. ~~Noted that a special packet will be delivered to Council this week in anticipation of the CIP workshop on Monday, August 15. This is a preview of Monday evening's presentation, which will reiterate some of the information regarding affordability in the CIP, the sources of revenue, and the sources of funding. The information will highlight what the Administration's priorities were in developing a recommended CIP. There is also information highlighting some of the key projects in this presentation. The notebook~~

March 5, 2001 Council Action

OTHER

- Policy regarding fee waivers related to the tree preservation ordinance
MOTION CARRIED 6-0 TO AMEND THE POLICY OUTLINED IN 10/25/00 STAFF MEMO TO COUNCIL TO INCLUDE A PROVISION THAT LANDMARK TREES (24 INCHES OR GREATER IN DIAMETER) BE EXEMPT FROM THE TREE-FOR-TREE REPLACEMENT AND BE REPLACED ON AN INCH-FOR-INCH REPLACEMENT; AMENDED POLICY ADOPTED 6-0

March 5, 2001 Council minutes

OTHER

Policy regarding fee waivers related to the tree preservation ordinance

Ms. Newcomb provided a brief overview and history of the ordinance. The tree preservation ordinance was approved by Council in October of 1998. Within the landscape code, Dublin always has had a policy which required preservation of trees during the development process. What changed with the ordinance in 1998 was a new requirement for tree replacement, based upon an inch for inch replacement. The formula was designed to be simple to implement and enforce. If inch for inch replacement would result in overcrowding, there was an option to pay a fee to be used for planting of trees on public property. Overall, the ordinance has been very successful, resulting in shifting of buildings on sites to preserve trees, better location of utilities in relation to trees, and better tree preservation methods in general. Staff has recently provided a couple of memos regarding the proposed guidelines for fee waivers. Staff also reviewed the sliding scale proposed by Mr. McCash, but it did not yield the results as hoped.

Staff is now recommending the formula as originally proposed in October of 2000 that takes into consideration whether all codes have been met on the site and if methods have been used to minimize tree destruction. If both of these have been met, staff would then recommend a fee waiver or reduced fee, based on a tree for tree replacement as opposed to inch for inch. In addition, based on discussion at Council and Natural Resources Advisory Commission, landmark trees of 24 inches in diameter or greater would be replaced instead on an inch for inch basis. Mrs. Boring asked that the definition of landmark tree and the location of those trees be included in materials provided to developers. She then asked how adoption of this policy would affect the pending Preserve development.

Ms. Newcomb stated that the developer would have to file for a waiver from Council. They received a full waiver for the first phase of the project, but they have been informed that the policies are changing. The developer has indicated that the project is not feasible without a waiver.

Staff will prepare a report on the efforts they have made to preserve trees on the site to date, and will make a recommendation to Council for this and the other developments for which waivers have been requested.

Mr. Reiner stated that he is encouraged to hear that better planning for utility placement and structures has been an outcome of the tree preservation ordinance.

Mr. Adamek moved to amend the proposed formula as outlined in the October 25, 2000 memo to provide that landmark trees, those 24 inches in diameter or greater, are exempt from the tree for tree replacement and will instead be replaced on an inch for inch basis.

Mrs. Boring seconded the motion.

Vote on the motion - Mr. Reiner, yes; Mrs. Boring, yes; Mr. Peterson, yes; Mr. Adamek, yes; Mayor Kranstuber, yes; Ms. Chinnici-Zuercher, yes.

Mr. Adamek moved to adopt the policy as amended.

Mrs. Boring seconded the motion.

Vote on the motion – Mayor Kranstuber, yes; Mr. Reiner, yes; Mr. Peterson, yes; Mr. Adamek, yes; Ms. Chinnici-Zuercher, yes; Mrs. Boring, yes.