

RECORD OF PROCEEDINGS

Minutes of COUNCIL OF THE CITY OF NORTH CANTON PUBLIC HEARING Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held Monday, January 14, 6:20 p.m., 2002 (YEAR)

The public hearing was called to order at 6:20 p.m., Monday, January 14, 2002, by President of Council Jon Snyder.

Present for the public hearing were: Council members Foltz, Kiesling, Lindower, Magel, McLaughlin, Osborne and Snyder. Also present were: Mayor Rice, Director of Administration Held, Director of Law Batista, Director of Finance Herr, City Engineer Benekos and Clerk of Council Bittle.

Transcriber was not in the record mode during this portion.

The hearing is with regard to a proposed zone change for part of Out Lot 230 located on Applegrove Road N.W., and known as Great Trail Girl Scout Council property and North Canton Rotary Park, from R-70, Residential, to OB, Office Building for the 3.000 acre tract known as Great Trail Girl Scout Council property, and P&I, Park & Institutional for the 10.718 acre tract known as the North Canton Rotary Park.

The North Canton Planning Commission, at their November 7, 2001 meeting, voted unanimously to approve the recommendation for the 3.000 acre tract from R-70, Residential, to OB, Office Building and voted unanimously to deny the 10.718 acre tract from R-70 to P&I, Park & Institutional.

Mr. Snyder: Is there anybody in the audience wishing to speak in favor of the zone change? There were none. Are there any opponents to the zone change?

Judge Zielasko: Inquired as to whether or not the Law Director would have a vote in the actual zone change because he recommended it. Will the Law Director consult with Council on this matter?

Mr. Snyder: Only in the case of point of law and I feel that Council would agree to do the same.

Miriam Welch: 800 Applegrove.

Transcriber now in recording mode.

Ms. Welch: be at the Planning Commission hearing. So I don't know if you saw my reasons - my husband and my - our reasons for objecting to the zone change. But one of the things that after reading the minutes of the Planning Commission, that I feel wasn't addressed, was the fact that if this zone change is granted it will set a precedent for the rest of that end of Applegrove and will ultimately end up with patchwork zoning. Because more people will say OB here and I want OB and so forth. I object to that because right now it's residential. The other thing that was not addressed, Mr. Batista did address a point of litigation for... What was that called? I forgot the name of it.

From audience: Sorry, I didn't hear what you said.

Ms. Welch: Mr. Batista, what was that? Vary - not a variance, the other thing.

Mr. Snyder: Nonconforming?

Ms. Welch: Nonconforming, okay. He said that would - might result in, in litigation. The other point that might result or probably would result in litigation would be spot zoning basis. And that really was not addressed. And I feel that might happen - it probably would happen. And Mr. Treadon is a talented litigator and organized. But - and probably there is some defense against that, I don't know. But to me the first thing when I saw this whole rezoning thing was spot zoning. So thank you.

Mr. Snyder: Anyone in the - else in the audience wishing to speak against the proposed zone change? Sir step forward, state your name and address for the record.

Jim Dutich: I'm - my name is Jim Dutich. I live at 1322 Janet Avenue. I've been here before. I really have - do have some concerns. In the first place, as a contiguous property to the Girl Scout Headquarters, we were not contacted to ask if we approved or had any problem with the - with the property - the Girl Scout property, which was built there. At that time they considered the Girl Scout Headquarters to be a conforming use in a R-70 zone. We have - I have no quarrel with that. I have no quarrel with the Girl Scouts in any way, shape or form. But now they come along and they make a decision - attempt to make a decision that, that first ruling was not right. So they're going to come back now and try to make - take a situation and make it the worst possible situation it could be by turning this into an office business. What assurance do we have that the Girl Scouts will not say we don't need all this building and rent out part of it to another business. I know in Muskingum County the Girl Scout headquarters is much, much smaller than this one. I have personal knowledge of that, I've been there and checked it out. I'm really concerned that they will turn this into a - as - under an office business they will legally be able to put the -- other tenants in the building and turn it into a business. And this type of zoning had been ruled as spot zoning and is illegal. Its been ruled that way in the courts right in Canton.

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We've been there and done that. There again I want to emphasize that I have and I know of no one who has any quarrel, any problem with the Girl Scouts having a headquarters there. We think they would be good neighbors. We'd make every attempt to do the same - be good neighbors to them. We are definitely opposed to any zone change of any kind - whether it be office, business or whatever it is. It's R-70 - it's been that way ever since day one, I think it should stay that way. We have - should have - not be bothered and worried by these - the constant zone change that we've had to deal with over the last 30 years. I wish they'd put this to bed. I wish you could write it in a deed restriction of some kind. But it ain't broke...inaudible...so don't try to fix it. Thank you.

Mr. Snyder: Alright sir. Thank you. Sir.

Tom Zucal. My name's Tom Zucal. And I live at 1110 Browning Avenue. This - like he said we brought this zoning up before. When Tom Grisez had this piece of property they - he tried to get that changed and we fought him on that. So then he turns it over to the Rotary and now we're doing the same thing. And I don't think anything's changed in the neighborhood, we're still against it. So I just wanted to let you know that.

Mr. Snyder: Thank you sir. Anyone else?

From audience: Yes.

Mr. Snyder: Judge would you like to speak?

Judge Zielasko: Could I - would ask for concession that I be permitted to remain...

Mr. Snyder: Let us offer you the microphone Judge from right where you're sitting and that will be easier for you.

Judge Zielasko: I would love to stand up there, but I just can't manage it Mr. Chairman.

Mr. Snyder: That's alright.

Judge Zielasko: At the very outset I would like to indicate that I have petitions here containing 55 signatures; all of them in favor of the current zoning as it stands. But turning now to the situation with the pending change of zoning. Number one let me say there - the matter is covered under the - in the ordinance under the term amendment. It's not - there's nothing in - you can't find anything in the ordinance which talks about rezoning. It talks about amending the zoning and there's a difference. Now this began around September the 4th or 5th, 2001 when our law director came and said he was unhappy with the decision that the former engineer of this city had made - Phillip Roush. And he indicated and I can't quote the exact words, something to the effect of weak minded or something...

Mr. Batista: Wrong-headed.

Judge Zielasko: Wrong-minded and illegal. Because he was alone, nobody was backing him up. And I will be handing to the Clerk a Zone Certificate signed by one Gene Hemminger on the 16th day of August, 19 or 2001, in which the construction of a new service center for the Girl Scouts was approved by Mr. Hemminger. Now Mr. Hemminger is the superintendent of Permits, as you folks all know. And I think there's a letter in the file somewhere, where the law director indicates that he is not in favor of what Mr. Roush or Roush has indicated. The second page of that document that's going to be turned over to the Clerk is entitled, Zoning Checklist. And it starts out part of Out Lot 230 and then zoned 70, Girl Scouts, sized 265, 500. In other words it gives a zoning certificate for the zoning as it currently stands. This is the petition which came from the architect, Mr. Studer, asking for an application for certificate of plan approval. The last page here is the decision of the zoning plan or plan - the planning zone group of October the or November the 7th. This document, which I will also give, is well acquainted to the lady who's seating next me, because she gave it to me and it's the Grisez Investment Company versus the City of North Canton. And it's findings of fact and conclusions of law. And it has to do what the law is governing the piece of ground we're talking about. Then also I have a copy of the August 5th letter from 1999 in which public use in R-70 district, which is the document that the law director referred to, signed by Philip Roush back in August the 5th, 1999. Now interestingly enough this was supposed to be a poor judgement on the part of the former engineer. But it took over two years before our law director got around to the point of getting around to this. And I'm wondering to this day what prompted this particular move at this given time. What was wrong with the two years that intervened? What happened on September the 4th, 2001 when you all gathered in a room and you voted to go ahead and file this particular amendment to the zoning ordinance. Now I have a further question on that. If you look at the zoning text and I'm looking now at OB, Office Building District, and you look down at the side it says district symbol and title. What's the symbol, OB - what's the title, Office Building. Now if you look in the column of main buildings that can be used, there are nine of them there. Which one - we don't

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know which one you're talking about. You could pick any one of them and we're not going to know the difference. But there's nothing in what the planning group have decided. All they decided and that's the purpose of carrying this, this one document, all they said was Mr. Vignos motioned to approve 10 acre tract for P&I, Shanabruch seconded the motion. Vote: 0-yes; 4-no, motion denied. Then Mr. Vignos again approved - moved to approve a 3 acre tract for OB and Mr. Shanabruch seconded and the vote was 4 to 0 to approve the rezoning of the three-acre tract. Now which one of these permitted uses is this Council saying we're - we should know what it is. I have read over and over those minutes and I cannot find one place that it tells me which one of these units or permitted uses is the one you're asking to have rezoned. Now you people asked for it so you should know which one it is. And I hope before this meeting is over you'll tell us. I'm going to read the little prefix that's on our petition where the 55 signatures have signed: We the undersigned property owners are against the proposed zone change from R-70 zoning on Applegrove Road for the Great Trail Girl Scout Council. We feel that the City should uphold the R-70 zoning classification as it is currently defined. A zoning change to OB would only serve to expand the permitted uses of the property and this would negatively impact the residential character of the neighborhood and provide no benefit to the Great Trail Girl Scout Council. This proposed change will only harm warm - or Ward 1 property owners. And I have nothing else to say.

Mr. Snyder: Alright. Is there anybody else in the audience wishing to speak before the council and against it? Chairman Kiesling you have any input into this at all? I mean you have anything to say on behalf of your committee?

Mr. Osborne: I'm chairman of ordinance...

Mr. Snyder: I think this is under community - oh, I beg your pardon. Is that...

Mrs. Kiesling: Well it is under - it started on Community & Economic Development.

Mr. Osborne: Yea, I guess you're right, yea.

Mr. Snyder: Then I'll come back - do you have any input on that? I mean that you wish to ask anyone or do you have any feel...

Mrs. Kiesling: I don't have any questions. I understand completely where they're coming from. He wants us to answer where we think OB - what building we think it might actually be under OB. It could be a professional building, it could be a sales building - I was told they're going to be selling their uniforms out of it. Public building - I don't know that it's a public building, but some people can say it's a public building. And a public building fits in residential also. But public building - I'm not going to walk into the Girl Scouts on monthly basis unless my daughter is in Girl Scouts and she's not. So I don't consider it a public building. Under OB, when we looked at OB, I would say it's more of a professional ? sales type of building and we went from there. The Planning Commission voted unanimously; now it's back in our lap. Anybody else?

Mr. Snyder: If I may interject one thing. If my memory serves me right, your Honor, on that it was a request that the Law Director and not to be in his defense, but was uncomfortable with leaving that type of building in an R-70 district if someone else would go within the city limits where there's R-70 zoning and erect a public building. And the only means of regress that we had there to go to the Planning Commission either by a vote of Council or a petition from some individual to the Planning Commission to change. So we voted to send it to the Planning Commission for their opinion, which in turn they sent back 4-0 on one and 4-0 on the other. So that's exactly how that zoning request came about. Be it right or be it wrong.

Judge Zielasko: May I respond to that?

Mr. Snyder: Yes sir, please.

Judge Zielasko: I'm looking at page 102, the Zoning Ordinance, entitled CHAPTER A, Amending Procedure. 1. Initiation and amendment may be initiated by a property owner, member of Council, or City Planning Commission. It doesn't say anything about a whole committee. And I'm looking right now - well I guess a couple of you are brand new, but I'm looking at least at 5 people who sat in when the Law Director had the session with them. So they all 5 of them, 2 of them are gone I guess, already would - should know how they're going to vote on this thing. They should of known back on the day when they actually promoted this thing. So I'm not sure that we're getting what is to be considered an impartial decision from people who have already asked to have this rezoned.

Mr. Snyder: Well, if I may say so and again not to sound argumentative, but we did ask the Planning Commission to give us their opinion as a Planning Commission, which they did. And their opinion came over for us to consider. So I would - hopefully that we are very impartial and open-minded when we do consider this. And I can speak for my colleagues sir, and assure you that I think you will get an honorable and open-minded decision. I don't feel that you're going to get - and I realize you know you come from a background of law so things are definitely...

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Judge Zielasko: Well I hate to beat this to death...

Mr. Snyder: Right.

Judge Zielasko: But I'm going to challenge that statement.

Mr. Snyder: Alright.

Judge Zielasko: And I'm looking again at your zoning ordinance. And the zoning ordinance says the Planning Commission must recommend approval, disapproval or modification of the proposed amendments and should list the reasons for their decision. The reasons in support of a proposed change, as well as the reasons against a proposed change shall, not may, but shall be listed on the recommendation to council. Now I have been through all of the papers that I - the clerk and everybody's had, I cannot find anyplace that says they're for the proposed change for the following reasons or against the proposed change. Now maybe you know something, but the rest of us don't.

Mrs. Kiesling: No. You're right, I've never seen one.

Judge Zielasko: Okay, there's an agreement there. So from a - there's a failure of complying with the law.

Mr. Snyder: Well I defer - I was going to say I'm going to defer now to the ward councilman, Mr. Foltz if he has some input in.

Mr. Foltz: Judge, I appreciate your research. And I'm sure you're quite accurate with everything you've brought to our attention tonight. I don't want to speak for the rest of Council, but I've been involved with some various members here of Ward 1 that live directly behind the open area behind the Girl Scout building and along Janet. And I feel quite confident by polling council earlier and we will discuss this at our next committee meeting that we do have the votes to keep this at R-70. Okay. Also, we've had a preliminary meeting with Mr. Snyder and a member of the Rotary and Mayor Rice concerning the rest of that parcel. And I believe its favorable for us to receive that parcel as a park property. So hopefully that will answer most of the questions here tonight. Once again, there's a long history, especially when you go back and Judge Zielasko gave me this months ago as far as the Grisez Investment versus the City of North Canton the court action on that. And I know its been something that's been looked at for the last 20 years in different capacities, but I'm - and here again I think we're all happy that and welcome the Girl Scouts. I see Mr. Spring is here who's been on that board and worked hard to realize their goal here in North Canton. It's just a matter of getting together with the neighbors and making sure that we protect the integrity of the neighborhood while also welcoming the Girl Scouts into our community. So hopefully you'll see this pan out in the next few weeks. That's all I have on the matter Jon.

Mr. Snyder: Thank you sir. Mr. Lindower have you anything to input and I'll come to you Chuck.

Mr. Lindower: I'm the new guy on the block.

Mr. Snyder: Alright.

Mr. Lindower: And I agree with everything that Doug said so far.

Mr. Snyder: Okay sir. Mr. McLaughlin you have any input?

Mr. McLaughlin: I agree with Doug. Doug and I have discussed this numerous times and I do agree with the ward councilperson.

Mr. Snyder: Mrs. Magel you have any input?

Mrs. Magel: Yes. I agree with the first two speakers who were discussing spot zoning. This is a clear case of spot zoning and yes it is illegal. I would support the ward councilperson. I would like to see this remain R-70. And although maybe we had a bumpy ride to get there, hopefully the ending will be to your satisfaction. That's all.

Mr. Snyder: Mr. Osborne.

Mr. Osborne: Well I have not made it a secret, I've been working with Judge Zielasko since this began about two months ago. I actually wrote his petition that he circulated for him. I've passed out to council a couple memos detailing in this case the long chronology from the August 5th letter from Phil Roush to August 1, 2001 Planning Commission meeting where and I'm not trying to embarrass anybody, but based on Roush's decision Mr. Benekos was quoted as saw no reason to change the R-70 zoning. Mr. Vignos stated the Girl Scout building is a public building. Mr. Shanabruch stated he had no problem with the Girl Scout situation. Mr. Pachmayer stated twice that he was in agreement with Mr. Shanabruch. And at the end of that meeting August of 2001, the vote was 4 not - let's see, 4 votes yes, 0 no to approve the location of the Great Trails Girl Scout Council in the R-70 zone property on Applegrove. They did stipulate subject to review by the law director. Now in defense of the Law Department, I've been told that a letter that Phil Roush wrote back August of 1999 somehow did not make it to the Law Department. It

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wasn't but about a week later Mr. Batista wrote a letter to the City Engineer and stated he would go along with Mr. Roush's conclusion for this particular use. And then a few weeks later, wrote a letter that - I guess he had some second thoughts and it's a part of the record here. There's a long history here. Also I had a memo sent around and I don't have a copy with me right now, but if you look at our OB zoning and our R-70 zoning, public buildings are allowed in both. So I guess it's just up to a judgement as to which public building you would allow in R-70 and which you would allow in an OB. It also states as a site remark libraries are allowed in both zoning areas. So present zoning is very subjective. It is hoped that our new zoning that we're working on will clarify and clear up a lot of these issues. And as I've made it very clear from the very beginning I am against any change in that area. And I've been supporting Judge Zielasko in this, the group and all those residents in that area.

Mr. Snyder: Thank you. Mrs. Kiesling have you any other comments that - I didn't want you to think that I skipped over you.

Mrs. Kiesling: No, I said what - next week we'll put it on our committee meeting, we'll talk amongst ourselves again and then in two weeks we'll vote on it.

Mr. Snyder: I think - anything else? As I told you...

Judge Zielasko: May I do one more thing please?

Mr. Snyder: Please Judge.

Judge Zielasko: May I leave the zoning map with the Clerk?

Mr. Snyder: Please.

Judge Zielasko: Thank you.

Mr. Snyder: As you know and for the people in the audience, this came as a positive recommendation from the Planning Commission. The council rules do require that there's five affirmative votes to overturn the positive recommendation. So upon five votes - this has to have three readings of Council, which will require six weeks and then five votes each time it is read, at the end of that period - 30 days after, which ever way the vote will go it will go become effective.

Judge Zielasko: Will we get a decision in writing or is it going to be verbal?

Mr. Snyder: No sir, it will be reduced to I believe..

Mrs. Bittle: Legislation.

Mr. Snyder: legislation. So you could have - you come to the Clerk...

Mr. Foltz: He can have a copy of that.

Mr. Snyder: and obtain a copy of the...

Mr. Foltz: Right.

Mr. Snyder: Of the actual legislation. But it will take a few weeks, but it will go through. But there being no other business before this body I will entertain a motion to adjourn.

Mr. McLaughlin moved and Mr. Osborne seconded to adjourn the public hearing. All members present voting:

Yes: Kiesling, Lindower, Magel, McLaughlin, Osborne, Snyder and Foltz.

No: 0

The public hearing ended at 6:50 p.m.

PRESIDENT OF COUNCIL

ATTEST:

CLERK OF COUNCIL