

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 9, 2006 6:15 p.m. 20 06

CALL TO ORDER:

The public hearing was called to order Monday, January 9, 2006, at 6:15 p.m. by President of Council Doug Foltz.

The following members of Council were present for the Public Hearing: DeOrio (arrived shortly after the start of the meeting), Foltz, Hines, Lane, Magel, Repace, Snyder.

Notice is hereby given that a public hearing will be held by the Council of the City of North Canton on Monday, January 9, 2006 at 6:15 p.m. in the Council Chamber at North Canton City Hall.

The hearing is with regard to a proposed amendment to Section 1107.05(e) and 1107.03(c) OPEN SPACE of the North Canton Zoning Ordinance.

The Planning Commission, at its November 9, 2005 meeting, recommended that the following definition be used for open space:

Section 1107.05(e)

Whoever subdivides under this chapter shall provide open space. A minimum of five (5%) percent of the gross area to be subdivided shall be provided and dedicated to the City. The open space shall be of usable size and shape for the intended purpose as determined by Council. Half of the five (5%) percent can be detention and/or retention basins.

1107.03(c)

The preliminary plat shall indicate the location and the intended use of the open space. The preliminary plat shall be presented to North Canton City Council at the same time as it is presented to the commission. Council shall approve the preliminary plat concerning the location and intended use of the open space after the commission approves the same.

Final action thereon, according to law, will be taken by the Council of the City of North Canton subsequent to the date of said public hearing.

Mr. Foltz: The purpose of this meeting is for a proposed amendment to sections 1107.05(e) and 1107.03(c) OPEN SPACE of the North Canton Zoning Ordinance. Can I have a motion to excuse Member DeOrio?

Mr. Repace: He'll be here in about a couple minutes.

Mr. Lane: Can we excuse him and then add him to the – I think we probably should.

Mr. Foltz: We can excuse him and then we'll mention when he returns. Do we have a motion?

Mr. Repace moved and Mrs. Hines seconded to **excuse** the absence of Councilman DeOrio. All members present voting:

Yes: Hines, Lane, Magel, Repace, Snyder, Foltz

No: 0

Mr. Foltz: Okay, at this time we'll ask for any comments from the audience who'd like to discuss for or against this open space definition. Please state your name and address.

Ms. Baughman: Miriam Baughman, 320 Weber Avenue. I am for open space, and I just have some comments to make. I have been a member of the committee to determine a definition of "open space" for the past two (2) years. After lengthy discussions and many meetings, the committee came up with a definition of open space, and the open space is to be, according to our subdivision regulations, five percent (5%) of any plat over so many acres. What we came out of the meeting

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with was that we would divide the 5% -- 2-1/2% would be dedicated to the City and be known as "public open space." The remainder 2-1/2% would be known as "open space" and be given to the developer to do what they wanted with. This was presented to the Planning Commission at a public hearing in October, and I have the meetings of that -- or the minutes of that meeting. That -- the definition was then continued by Planning Commission to their November meeting. And as the result of the November meeting, the Commission members wanted a definition to be drawn up and then brought back to Council. I read what's in your packet, which says open space as approved by the Planning Commission. I was at all of those meetings, and I don't remember that this definition was ever approved. The definition was also supposed to be drawn up based upon discussions at the public hearing and discussions of the Commission. I don't see that this definition in your packet covers what was based on the discussions; in fact, there's even things in this definition that were never even talked about or discussed. Since you do not have all the information in your packet, the definition that we brought to the Planning Commission was known as Definition No. 1, and I don't think you even have that in your packet. So, what I'm asking you to do is to take no action on this until all of the details can be brought forward to everybody. I would like the opportunity to meet with each of you one on one. It would probably take 15-20 minutes. I have copies to give to you to go over all of the definitions so that when it comes time to decide on a definition, you will be informed and make the appropriate decision. I have a particular concern with 1107.03(c) which says: "Council shall approve the preliminary plat concerning the location and intended use of the open space after the Commission approves the same." What I understood from all the meetings I attended was that it would come to Council first to be looked at and approved, then go back to the Commission, where it would be acted upon and then come back to Council for final approval -- so that Council was involved from the very beginning -- not after Planning Commission approved it. Thank you.

Mr. Foltz: Okay, thank you for your comments. Anyone else in the audience who would like to address Council on this issue?

Mrs. Garcia: Kathryn Garcia, 1036 Park, NE. People, we've been foolin around with this thing for a heck of a long time. Now, this is Grandma Garcia telling you right now it's time to get on the ball; get it settled; get it right this time, and take care of the people that live here that are gonna live in these allotments that people are making a lot of money on. So, let's get with it, okay?

Mr. Foltz: Okay. Thank you. Anyone else to address Council?

Ms. Schilstra: Mary Schilstra, 601 Linwood. I'm not sure if I want to follow those two, but --

Mr. Foltz: She's a hard act to follow.

Ms. Schilstra: Oh, they're good. As I look at Hoover leaving, as most of you guys do, I see that we're becoming more of a bedroom community, and I think that when you look at bedroom communities, we do look at what the City has to offer. I think most of you guys know, I live down by Price Park. I picked living near Price Park, because, to me, having that open space near your home is so important, especially when my son was young. It was so wonderful just to be able to walk over, look at the ducks, look at the trees, play the playground and just see nature in your own back yard. I'm a firm believer you don't need to go far away to see nature. You should be able to see it in your own back yard. And I think to have a development to be open for everybody should be a wonderful thing. It doesn't have to be fancy, but it has to be space for the animals, the butterflies, and you know what I'm saying -- that everyone can get out there and enjoy -- and they're saying how children do need to have the experience of being outside. In fact, a gentleman who wrote a book on this, I believe, is *The Last Child in the Woods*. It was on NPR. It was a book interview, he was saying he wonders if children are getting ADD and other things because they're not being outside. That the -- life is so fast. If you can be outside, you slow down and take a look. And it's just, to me, is to be part of education, too. The kids don't realize they're learning, but they are when they're

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outside. And to experience life – and, you know, I hate to say it. Our planet is taking a lot of crap right now. If we can just save a little bit, to me, that's worth it. So, okay.

Mr. Foltz: Okay. Thank you. Anyone else to address Council on this open space? Any comments from Council, itself?

Mr. Snyder: President Foltz, I'm somewhat miffed, here. This came over. It was my understanding that this what we're considering is a recommendation of the Planning Commission. We cannot – if it's a recommendation, you cannot stall it. If, in fact, it's not a recommendation, it's a futile effort. I mean, it has – according to our own subdivision regulations, it has to initiate out of Planning and be considered out of Planning. But if Planning has not recommended this, and then, actually, you're just going through the exercise for nothing, because it's a violation of your subdivision regulations. And the present subdivision regulations does not permit the Council to preliminarily approve open space prior – that's down at the Planning Commission level. And, if that's the case, what we're gonna do, then the subdivision regulations have to be changed before we can address them. But you cannot begin to pick and choose, as you wish, to allow Council to look at plat plans and designate open space. That's a subdivision regulation which is done through Planning. But if they did not, in fact, recommend this recommendation, it cannot be considered. This public hearing should have never went forward. But if it is a recommendation of the Planning Commission, it can be considered. But do the minutes state that, or are they just –

Mr. Pusateri: Let me jump in. I mean, Planning Commission dealt with this, I don't know, I think since the time I've been here.

Mrs. Magel: Ten.

Mr. Pusateri: And we've gone through revision after revision after revision, and I've drafted a number of revisions. And, actually, the one that Mrs. Baughman is talking about, you know, definition 1 and 2 – that was part of a packet. And I'm not sure if the new Council got that, or if it was before the new Council or after the new Council. We've talked of different definitions, but they may not have it – you're right, Mrs. Baughman – that definition that we submitted to Planning Commission some time ago. But it's been redrafted a number of times, and, then, at the last Planning Commission meeting, frankly, I thought that we had it complete. Jim, if you can remember, I thought we had it right. We brought it to Council – or to Planning Commission after (inaudible) discussion. Planning Commission's sediment at that time was they want to get something done and get it to Council for Council to discuss. And this is what the product was that I best understood what the Planning Commission wanted. Now, if you look at the – that one section that Ms. Baughman was talking – after/before. There was discussion about that, and the reason "after" was there is that Planning Commission thought that Planning Commission probably had an expertise that Council would appreciate, you know, the review of the plat before Council reviewed it so that you can have their comments concerning any open space that was being suggested for a particular preliminary plat. That's why they put the word "after" in there as opposed to "before," but, you know, it could go either way. I mean, this is – the only change to this open space from the previous, or the one that exists today, is that we have five percent (5%), but that 5% is going to be actually dedicated to the City. Where, in the past, that was not the case. And that was a decision that Planning Commission wants. That was one big issue. They wanted it dedicated. And almost half of that was available for whatever the City decided it wanted it to be available for. That's what Planning Commission wanted – half. So, you had 2.5% of the gross area to be available for the City – for the City's purposes, anyway they wanted to use it. The other 2.5% could be used for open space, and it could include detention and/or retention basins. All right. And, then, the other change is that it now includes City Council to be involved in the determination of what "open space" is going to be at the preliminary plat submittal process. Where, in the past, Council would get the final plat. It would have the open space in there, and your decision would either be dedicated or not dedicated – or accepted or not accepted. There was no discussion at that point, because it was then the final plat. So, another mechanism was

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required by the Planning Commission to get Council's involvement at the beginning. And that's why you had the section changed in 1107.03(c) where North Canton Council is involved at that level. That forces the developers to do what Mr. Foltz had wanted to do at the very beginning – have conversation with Council at the beginning, as opposed to at the final plat level. But, Mr. Snyder, you're absolutely right, and I can't disagree. I mean, technically, Planning Commission did not approve this, this language. I mean, they certainly indicated to me what they wanted, but did they officially approve it? No. So, at that point I recommended Council – you send it back to Planning Commission and let them approve it.

Mr. Snyder: Well, another thing –

Mr. Pusateri: If that's what Council wants. But my understanding from their point of view was that they wanted it in Council's hands so Council could redraft it how they wanted it to be drafted.

Mr. Snyder: The problem I find –

Mr. Pusateri: We've been talking about this for 2-1/2 years.

Mr. Snyder: The problem that they basically want to do, and I would think it would be a little simpler, if this is what we want to accomplish, is to change the subdivision regulations to read such. The way it stands right now, you're gonna take the developer's land and appropriate it out without process. You – you're taking five percent (5%) of his land that does not read in the subdivision regulations, and you're appropriating his property without due process. But if you list it in the subdivision regulations, he either develops under those regulations or he doesn't. And it's simpler than trying to reinvent the wheel. If you change the subdivision regulations to read 5% and however you want it to read – open space – and I thought it was my understanding that the full 5% would be actual useable land, not scrap detention basins and flood plains – and read that the subdivision regulations require the developer to give you 5% of useable land. Then, that way it's not an illegal appropriation. They must abide by it. The Planning Commission and the Council's approval at preliminary plat would be fine. And I think you can eliminate all the problems and all the ambiguity that you're looking for right now. Because I think we're making it a little too difficult for what we're trying to do. Because, I believe what – and Mr. Foltz sat here with me, and I know we took that on a chin up there in Mr. Lane's ward where we ended up with a detention basin instead of a – it might have been a big water hole instead of a –

Mr. Pusateri: The Planning Commission discussed that, excuse me, but the detention/retention pond, I – I didn't think anybody wanted that to be dedicated, but Planning Commission decided that it would be better to be dedicated by the City and then the City would – because the concern was, in the past, detention basins or retention basins that were dedicated weren't kept up. You know, weren't maintained properly. And that's – the thought was by dedicating, the City would then maintain them properly.

Mr. Snyder: Are we within our – I should say I know we're within our right – but maybe just for the sake of ruffling feathers, may we ask the President to direct a letter to the Planning Commission telling them exactly what we'd like to see come out of there and form of a recommendation, whether it be change the subdivision regulation or change whatever you want to do. And if you do, President Foltz would just send them a letter and ask them to please do that, and then we can go on, and we can accomplish what the people want, and we can get it done very simply and with one (1) public hearing, I think, at both levels and move on.

Mr. Foltz: Well, Member Snyder, here's what – here's what we're going to do. Is there any other comments?

Mr. Lane: Do we have to republish, then, all of these times, if we do anything like that?

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Mr. Foltz: Probably so. I'd want another public hearing on the definition change. Yes, I would.

Mr. Snyder: Well, you have to anyway.

Mr. Repace: Doug. You know, I agree with what Jon said. It makes a lot of sense to me what he just said. But, also, you know, I'd like to see what the ladies are talking about. You know, when the public gets up here and speaks, we have an obligation to listen to what they have to say, you know. And I think that we need to take the time to see exactly what they're talking about before you write any letters or we have another hearing or send anything back to the Planning Commission. If this thing's gonna be done, I don't know how long this thing's been lingering, but listening to everybody, it's been lingering a long time. If you're gonna do it, do it right; quit messin around with it. So, I'd like to see what you have there. I'm sure everybody else up here would too. That's it.

Mrs. Magel: I would just like to vouch that Miriam has been on this committee for over two (2) years. Doug, how many hours did we put into this? And, as far as going back down to Planning, back up to Council, back down to Planning, back up to Council, we're playing hot potato instead of actually dealing with the issue. And, there is something, I believe it was called Proposed Definition No. 1. And that is what this – there was a committee of four (4) – Mr. Peters, Jeff Peters was involved, Councilman Peters, at the time, and Councilman Doug Foltz at the time, and Miriam and I and Goldie. And I'm telling you, many hours, many meetings went through this. And I thought we all had agreed with Definition No. – Proposed Definition No 1, and that is where Miriam is gonna take you with that definition that we had come up with –

Mr. Foltz: Yeah.

Mrs. Magel: And, then, we took it back down to Planning, and then there's minutes as to the discussion. And I appreciate Paul saying that this was not as – approved by Planning. It was not. Although, they did just say write something up and take it back up to Council. Isn't that – they say (inaudible).

Mr. Foltz: That's the problem. It's interpretation of maybe what the Planning Commission members are saying, what our intentions are, what our Law Director writes up. I don't mind going back to Planning Commission one more time. I hope that's it. Really, I do, because -

Mrs. Magel: Doug, you're too kind, really.

Mr. Foltz: Member Snyder, you know I've been – probably the last eight (8) years out of my ten (10) years up here, I've been arguing about a decent definition for public open space. And I've never in my wildest dreams imagined it would be this difficult to get the language right. But I'm willing to take another shot at, you know, the Planning Commission to get everybody in the comfort level if that's what it takes to get this right. I mean that wholeheartedly. And the new members – welcome aboard, but this train's been runnin for a long time. So, why don't we just do this. We'll end this public hearing, or you can have some discussion to better –

Ms. Baughman: One question. It says here Council shall approve the preliminary plat concerning the location and intended use of open space after the Commission approves the same. Does that mean there has to be five (5) votes, then, if we don't – if you don't agree, it has to be five votes to say no, you don't agree? If they've already approved it.

Mr. Snyder: Has to be six (6) under the present zoning.

Ms. Baughman: Right.

Mr. Snyder: Supermajority. Yeah, you have to re-change that, that –

Ms. Baughman: To me, that's not having Council involved.

Mr. Snyder: Yeah, it would take a supermajority. You might want to strike it where it says –

Mrs. Magel: That is a good point.

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Mr. Pusateri: That's a valid point. I agree. It could put you in a different position. I think it's a good point.

Ms. Baughman: Yeah. That's being more adversary than being involved.
Mr. Pusateri: Yeah, I agree. I think that's – I hadn't thought that.

Mr. Snyder: You know, at the same time, we can re-look at that little language in the – there are a couple things in that Zoning Ordinance that should be immediately attacked. That's one of them, and change those things at around the same time. But we look forward to your input on that, and let us know.

Mr. Foltz: Why don't we – I know when we put this up for committee, even though we passed our own deadline, but I think we need to move forward with this. This is something that isn't new to this Council – some members of this Council and this community, so we'll put it on for next week, and we can have other comments directed to Council at that time. I don't think we'll open up for public discussion, but we'll try to get on the same page then move forward for this up to the Planning Commission. Is that okay with everybody?

Mrs. Magel: Well, in the meantime, they wanted time to meet.

Mr. Foltz: Well, that gives us a week.

Mr. Pusateri: I can have – make sure –

Mr. Foltz: Just write – you can write us something, Miriam, if you could, and ask that. I'll make sure we discuss it at that meeting.

Mr. Pusateri: Maybe if Gail can – this letter of November 17th that has the different proposals that are attached to it – maybe if you could put that in Council's box. That way they'll have all three (3) definitions that were – you know – the original one, the modified one, and then the last one.

Mr. Lane: Will we note for the official record Member DeOrio arrived about three (3) minutes into the meeting, so at least we've got him accounted for?

Mr. Foltz: Member DeOrio was present for most of the discussion (inaudible).

Mr. Lane: 99% of it, I believe.

Mr. DeOrio: May, may I just ask Doug that does the Planning Commission have any timetables that they operate under if this gets referred back to them? It seems like we – the train's been runnin in circles, and they keep it for two (2) months, six (6) months –

Mr. Foltz: They're well aware of what, I feel, that the – my intentions are with it, as well as some other members here. And I think we can get very well concise and clarify it at the next Planning Commission meeting if we have some additional input.

Mrs. Magel: In my opinion, the Planning Commission just said bring it back up to Council.

Mr. Pusateri: That's exactly what they said.

Mr. Foltz: We all know what we want, it's how we get it done, basically, so, okay? All right.

Meeting adjourned.

PRESIDENT OF COUNCIL

ATTEST:

CLERK OF COUNCIL

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