

The Council of the City of North Royalton met in the North Royalton City Hall Council Chambers, 13834 Ridge Road on **August 24, 2006, in special session**. The Special Meeting was called to order at 5:36 p.m. by President of Council Robert A. Stefanik and opened with the Pledge of Allegiance.

PRESENT: Council: President of Council Robert Stefanik, Council Representatives Denise Bobulsky, Vincent Gentile, Kurt McKee, Larry Antoskiewicz, Lisa Uffman-Kirsch; Legislative Services Director Laura Haller.

Administration: Law Director Thomas O'Donnell.

Moved by Mr. Gentile, seconded by Mr. Antoskiewicz to **excuse Councilman Willey**. Roll Call: Yeas: **Six** (Stefanik, Bobulsky, Gentile, McKee, Antoskiewicz, Uffman-Kirsch). Nays: **None**. (Absent: Willey). **Motion carried**.

The Director of Legislative Services read the Special Meeting Notice. Notice of this meeting was posted and presented to Council as required.

PUBLIC DISCUSSION - None

LEGISLATION:

FIRST READING CONSIDERATION

ORDINANCE 06-115

Introduced by: Gentile. **AN ORDINANCE AMENDING ORDINANCE 06-113 WHICH ESTABLISHED INTERIM DEVELOPMENT CONTROL DISTRICT (IDC) NO. 3, EXHIBIT B, IN ORDER TO CLARIFY REVIEW GUIDELINES, AND DECLARING AN EMERGENCY.** Title read.

Moved by Mr. Gentile, seconded by Mr. Antoskiewicz to **suspend the rules requiring 3 readings and referral to committee**. Roll Call: Yeas: **Six** (Stefanik, Bobulsky, Gentile, McKee, Antoskiewicz, Uffman-Kirsch). Nays: **None**. (Absent: Willey). **Motion carried**.

Moved by Mr. Gentile, seconded by Mr. McKee to **adopt Ordinance 06-115**. (*This motion was subsequently withdrawn in deference to the motion to "adopt as amended" made later in the meeting.*)

Since there has been no opportunity to take this legislation into committee, Mrs. Uffman-Kirsch asked for a summary of what this legislation is and why we are doing this so that she has a clear understanding of the purpose and intent.

Mr. O'Donnell stated that the Engineering Department had advised that there were applications for permits that based on the review of the criteria would have to be denied. Someone applied for a permit to add a patio to their existing home and under the criteria of the original ordinance, they were required to deny this permit and put it into the appeal process. Mr. O'Donnell said that there is an existing previously approved subdivision where the builder had asked for permits to start construction on 4 homes, and all of those permits would have to be denied, even through there was a previously approved drainage plan. This was the impetus for the amendments.

Mrs. Bobulsky said that she had some concerns and questions with the 3rd WHEREAS Clause where it states “so that existing residential property owners would, for example, be permitted to add a patio or other insignificant modifications that would have little or no affect on the Chippewa Creek Watershed.” She felt that this language was rather specific and since this also includes individual parcels in pre-approved subdivisions, she wonders if we should strike this verbiage and put a period after the word “District”.

Mr. O'Donnell said that the WHEREAS clauses are not the law. They are a preamble discussion and they are not binding. What is binding is all language after “NOW, THEREFORE, BE IT ORDAINED....”.

Mrs. Haller pointed out that this same language is contained within Section 5, Emergency Clause, which appears in the Ordinance after the language “NOW, THEREFORE, BE IT ORDAINED....”.

Mr. O'Donnell did not think this was in any way inconsistent with the criteria. Paragraph B at the bottom of the criteria basically says that.

Mrs. Bobulsky said that she understands but she is thinking that it is not thorough. If we are going to be specific about the patios maybe we should add the verbiage including the individual parcels or just strike it in the WHEREAS Clause and then carry it through under Section 5.

Mr. O'Donnell did not feel it was necessary to delete it from the WHEREAS Clause because this is just an example of why we are doing this.

Mrs. Bobulsky asked about Section 5.

Mr. O'Donnell said the language could be removed from Section 5.

Mrs. Haller asked then if the removal of this language would still make the emergency clause sufficient.

Mr. O'Donnell said yes.

Mr. Gentile said that he sees Mrs. Bobulsky's point, but instead of ending at “the District”, would it be better to simply strike the language “to add a patio or other”.

Mr. O'Donnell said that the whole line should be removed. It said that it is the Emergency Clause and all this clause states is why this should be an emergency and the emergency is that we need to clarify it.

Mr. Gentile asked if the removal of this language would still allow for pre-approved planned subdivisions to continue to build houses and for existing homes to add insignificant modifications without falling under this moratorium.

Mr. O'Donnell said yes. This is all in the criteria under Exhibit B.

Moved by Mr. Gentile, seconded by Mrs. Bobulsky to amend Ordinance 06-115 as follows:

Section 5. This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare of the city, and for further reason that Council has determined that it is immediately necessary to amend Ordinance 06-113, Exhibit B in order to clarify and limit the application of the District. ~~so that existing residential property owners would be permitted to add a patio or other insignificant modifications that would have little or no affect on the Chippewa Creek Watershed.~~

Roll Call: Yeas: **Six** (Stefanik, Bobulsky, Gentile, McKee, Antoskiewicz, Uffman-Kirsch). Nays: **None**. (Absent: Willey). **Motion carried.**

Mrs. Uffman-Kirsch said that she has additional comments and amendments. Although she understands what the Law Director has stated about the WHEREAS clause, since the language was the same, she would feel more comfortable if they were consistent specifically because the 3rd WHEREAS Clause includes the words "residential property owners" and she does not believe that this IDC is limited to only residentially zoned property. She thinks that the cleanest way to do this would be to end it after the word "district" just like we did in the other amendment.

She also stated that in the 3rd WHEREAS Clause and in Section 5, she would propose that we change the word "extent" to "application". She is not sure that this legislation actually amends the extent of the district.

To summarize, she would like to amend the 3rd WHEREAS Clause to be consistent with the Emergency Clause because of the word "residential", and change the word "extent" to "application".

Mr. Stefanik asked Mr. O'Donnell to comment on these proposed amendments.

Mr. O'Donnell said that he does not care. The language has no significance whatsoever other than to provide an example of why we are doing this. He said striking this language will not have any affect on the legislation.

Regarding the word "extent" vs. "application", Mr. O'Donnell said that they mean the same thing to him, but application would probably be a little more specific and he has no objection to this amendment.

Mrs. Uffman-Kirsch said that she has other proposed amendments as well and Mr. Stefanik said that she should go ahead and present them all now.

Mrs. Uffman-Kirsch said that in Exhibit B, Section 3, paragraph (A), she is proposing for clarification and reading that it be amended to read: "Permits for new construction, site improvements, changes in use, subdivision development ~~or~~ **and** other permit activities.....". This will make it clear that everything prior to that is inclusive.

Mrs. Uffman-Kirsch said that in Exhibit B, Section 3, Paragraph (B), she is proposing the language be amended to read: "The City Engineer shall review permits for new construction, site improvements, **and** excavation or fill....." to make clear that everything previous is inclusive to what follows.

Mr. O'Donnell said in terms of statutory construction, those are all treated individually or collectively. Changing the word "or" to "and" does not change the responsibility. They are not all inclusive, they are each individual components of things the Engineer is supposed to do. Using the word "or" is simply subjective because the Engineer is still required to do it. He has no objection if it is changed from "or" to "and", but he does not feel it changes the meaning. The City Engineer will still be responsible to do all of these things whether it says "or" or "and".

Based on the previous discussion the following amendments were proposed and acted on individually.

- Amend 3rd WHEREAS Clause as follows:

WHEREAS: Council desires to amend Ordinance 06-113, Exhibit B which established the criteria for review of building permits in the IDC No. 3 in order to clarify and limit the application of the District. ~~so that existing residential property owners would, for example, be permitted to add a patio or other insignificant modifications that would have little or no affect on the Chippewa Creek Watershed.~~

Moved by Mrs. Uffman-Kirsch, seconded by Mrs. Bobulsky to **amend Ordinance 06-115 as read.**

Mr. Gentile said that he agrees with the Law Director in that this is the preamble, it gives examples and is not legally binding. This is beating up something that does not need to be beat up.

Mrs. Uffman-Kirsch said it may be true that it is not binding, but it is her contention that our legislation should be clear. WHEREAS clauses are the intent, especially where we are including the term "residential property owners" and this IDC is not limited to residential, and for the fact that there are other modifications that this IDC covers in addition to adding patios that may not be considered insignificant by some people like, for example, the ability for subdivisions to continue their process of development, whereas individual property owners that are not in a subdivision cannot continue. For those two reasons, she feels that the WHEREAS clauses should be clear about what the intent is of the legislation.

Mrs. Bobulsky agrees with Mrs. Uffman-Kirsch that for the sake of clarity and consistency, she would like to see this amendment made.

Roll Call: Yeas: **Three** (Stefanik, Bobulsky, Uffman-Kirsch). Nays: **Three** (Gentile, McKee, Antoskiewicz.) (Absent: Willey). **Motion defeated.**

Amend 3rd WHEREAS Clause and Section 5 as follows:

"...and limit the ~~extent~~ **application** of the District."

Moved by Mrs. Uffman-Kirsch seconded by Mrs. Bobulsky to **amend Ordinance 06-115 as read.** Roll Call: Yeas: **Six** (Stefanik, Bobulsky, Gentile, McKee, Antoskiewicz, Uffman-Kirsch). Nays: **None.** (Absent: Willey). **Motion carried.**

- **Amend Exhibit B, Section 3, Paragraph A as follows:**

“Permits for new construction, site improvements ,changes in use, subdivision development or **and** other permit activities.....”.

Moved by Mrs. Uffman-Kirsch, seconded by Mrs. Bobulsky to **amend Ordinance 06-115 as read.**

Mr. Gentile said that Law Director said that this would not change the meaning of the subject and therefore he does not see the need to amend the legislation if it is not going to change the meaning.

Mrs. Uffman-Kirsch provided an example of why she proposed amendments to Exhibit B (A) and (B). In Paragraph (A) the language reads: “permits for new construction, site improvements, changes in use, subdivision development or other permit activities subject to review are prohibited...”. She said that she was not sure that if everything that followed is prohibited if the reviewer determines, if that applied to just subdivision development or other permit activities, or if it applied to everything prior. In checking on this, she was told that it applies to everything above there. This is why she suggested that we change “or” to “and” for clarity. For the same logic, when she was reading Paragraph (B), she was not sure if what followed still applied to just the last thing in the series, or everything above. This is just for clarification.

Mr. O'Donnell said that in statutory construction the use of the word “or” does still include the previous items. It is very common to use it in this fashion in criminal statutes and a number of other statutes. He does not agree that this has to be changed.

Roll Call: Yeas: **One** (Uffman-Kirsch). Nays: **Five** (Stefanik, Bobulsky, Gentile, McKee, Antoskiewicz). (Absent: Willey). **Motion defeated.**

- Amend Exhibit B, Section 3, Paragraph B as follows:

“The City Engineer shall review permits for new construction, site improvements, **and** excavation or fill.....”.

Moved by Mrs. Uffman-Kirsch, seconded by Mrs. Bobulsky to **amend Ordinance 06-115 as read.**

Mr. Gentile said that this is another unnecessary amendment. He does not see how it changes the meaning and does not think we should amend something that does not need to be amended.

Roll Call: Yeas: **One** (Uffman-Kirsch). Nays: **Five** (Stefanik, Bobulsky, Gentile, McKee, Antoskiewicz). (Absent: Willey). **Motion defeated.**

Moved by Mr. Gentile, seconded by Mr. McKee to **adopt Ordinance 06-115 as amended.** (*The previous motion to adopt and the second where withdrawn by Mr. Gentile and Mr. McKee respectively*).

Roll Call: Yeas: **Six** (Stefanik, Bobulsky, Gentile, McKee, Antoskiewicz, Uffman-Kirsch). Nays: **None.** (Absent: Willey). **Motion carried.**

ADJOURNMENT

Moved by Mr. Gentile, seconded by Mr. McKee to **adjourn the August 24, 2006, Special Council Meeting**. Roll Call: Yeas: **Six** (Stefanik, Bobulsky, Gentile, McKee, Antoskiewicz, Uffman-Kirsch). Nays: **None**. (Absent: Willey). **Motion carried.**

Meeting adjourned at 6:01 p.m.

APPROVED: _____ DATE APPROVED: _____
PRESIDENT OF COUNCIL

ATTEST: _____
DIRECTOR OF LEGISLATIVE SERVICES