

RULES & ORDINANCES COMMITTEE MINUTES
July 5, 2005

The Rules & Ordinances Committee meeting was held on July 5, 2005, at North Royalton City Hall, 13834 Ridge Road. The meeting was called to order at 6:43 p.m.

Present: Committee Members: Chair Robin Zaccardelli, Denise Bobulsky, Donald Willey; Robert Stefanik, Vincent Gentile, Tom Koch, Lisa Uffman-Kirsch; Law Director Thomas O'Donnell.

Mr. Willey moved to approve the minutes from June 7, 2005, seconded by Mrs. Bobulsky. 3 yeas/0 nays. Motion carried.

UNFINISHED BUSINESS

1. Proposed Ordinance 05-29, Mayor Appointment of Christine Ragone to Recreation Board

Mr. O'Donnell reviewed that he provided an opinion regarding the appointment. Mrs. Zaccardelli said the additional question is if there is any money owed. Mr. O'Donnell said he was not aware of the question regarding money owed. He has done no investigation to whether money is owed or not. He said there is a September memo to the North Royalton Recreation Board from Mr. Janusek, the Soccer Club President, saying that they are at a break even point with regard to the amount of money they paid Mr. Ragone and the amount of work he performed. In October there was a letter sent via email and made part of the Recreation Board minutes saying that if the job is not finished they would bring in someone else and see if money was owed to Mr. Ragone. Last month there was a letter saying that he may owe something. Mr. O'Donnell said the real issue is if the money owed is a legal impediment to the appointment of Chris Ragone to the Recreation Board and Mr. O'Donnell does not think it is. Whatever relationship that existed between Pete Ragone or his company and the Soccer Club, not the Recreation Board and not the City, has expired. They no longer have a relationship, he no longer has an interest in a public contract. There may be a contractual issue as to whether there is money owed or not owed, but that should not be a legal impediment to the appointment of Mrs. Ragone. Mr. O'Donnell does not know the relationship of Mrs. Ragone to her husband's company. The only document he has ever seen between Mr. Ragone and the soccer club with regard to that particular project was on the letterhead of his company. Mr. O'Donnell had not researched the background of the company to know whether or not it is incorporated. When he no longer has a relationship with that organization Mr. O'Donnell does not see an impediment to her being appointed. If that issue came up on the Recreation Board, she would simply recuse herself and not be involved in the decision making on any issue related to her husband or any contract her husband was involved in. Mr. O'Donnell said he did not see any cases in the Attorney General opinions or the ethic opinions indicating when the relationship is severed and the contract is over even if there is money due or owing that it was a conflict with the appointment of the spouse. What would be a conflict was if she was already a member of the board and this contract was ongoing. It would be very clear that she could not vote on it. Mr. Willey said that we do not know if she is an officer of the company.

Mrs. Zaccardelli said we still do not have anything from the Recreation Board.

Mrs. Bobulsky said she spoke with Mr. Janusek, but has not received an adequate answer. She suggested that Mr. Ragone and Mr. Janusek be brought to the Recreation Board to resolve it.

Mr. O'Donnell said it is his understanding that the relationship has severed. There is no longer an ongoing relationship. The contract is either completed or terminated. In the construction industry things are either brought to a substantial conclusion which ends the contract or terminated. In this case he understands the October letter was to terminate his services if he did not complete it by the end of November. The contract is over. There is a question of dollars and cents. Does that raise an impediment to her being a member of that board. Mr. O'Donnell said he does not think it is an impediment to her being a member, but it is clear if there is ever an issue with that contract and the Recreation Board that she cannot vote on it.

Mrs. Zaccardelli moved to remove this from committee with no recommendation.

Mr. Willey said that there is still an unanswered question if the contract has been terminated. He asked if the Recreation Board was satisfied and if this matter is resolved.

Mrs. Bobulsky said it is not necessarily resolved. There is confusion because of conflicting information. She would like to resolve the issue before moving forward with the appointment. This could be resolved at the next Recreation Board meeting if Mr. Ragone and Mr. Janusek are there.

A letter is needed from Mr. Janusek regarding the status of the project. Mrs. Bobulsky will attempt to have Mr. Janusek and Mr. Ragone at the next Recreation Board meeting.

NEW BUSINESS

1. Proposed Ordinances 05-107 and 05-108

Mr. O'Donnell was asked to advise if these amendments to the Zoning Code needed to be referred to the Planning Commission. He felt it does not have to go to the Planning Commission.

2. Proposed Ordinance 05-74 Public Hearing on the Huntington PUD

Mr. O'Donnell said he that the definition in 1260 was not reviewed in conjunction with this project. He said upon review of the definition it is clear in its requirements of both a residential component and some other component either public, quasi-public, commercial or office. Both components are required.

There was discussion regarding if the common ground area meets the definition of public facility. Public facility means it is publicly owned and for public use not just for the neighborhood.

Potential problems: if the PUD designation is given on the common land owned by the homeowners association being quasi-public. Foreseeable problems would be people coming in and out who do not live there, homeowners association could say if the public can come in then the city should handle all of the area. If it says open to the public, but it is truly privately owned land, it is owned by a private association not a public entity.

The Law Director is asked to attend the July Building and Building Codes committee where the applicant of the PUD will be invited back so this can be further discussed.

Mr. Willey said he did not feel that the city should be responsible for this type of land. What if the homeowners association dissolves, who is responsible and can the homeowners association really dissolve when each homeowner owns a portion of the common area.

Mr. Stefanik said also discussed was a conservation easement and if Soil and Water could take over this and would that qualify. Mr. O'Donnell responded that an easement is not an ownership of the land. It is the right to use the land for a specific purpose. One could argue that a permanent conservation easement given to Soil and Water essentially grants almost all ownership rights to that land in perpetuity. If Soil and Water owns it but it is still only used by just the neighbors it is a plus to the developers. Mr. Stefanik said it is a plus to the city too because we don't have to worry about the open space.

Mr. Gentile said that there was discussion that having the land in a conservation easement in case the homeowners association went defunct was desired. Certain guarantees are needed so that nothing could be done with the land. Most of it is wetlands and it is going to be part of the storm water control. It cannot be disturbed. We want those assurances. We have detention basins now with homeowners associations that are no longer in effect. Mr. O'Donnell said under that theory the homeowners association still owns the land, but the developer has granted a conservation easement over that land. It is encumbered by the

easement even if the developer goes belly up. Whoever assumes ownership of that land will be subservient to that easement. Mr. Gentile said he spoke with Mr. Hauser from Soil and Water about putting in some park benches and walking trails. Mr. Hauser advised that the deed restriction can encompass this. A controlled public access, whether viewing platforms or benches, can be done. With this easement the property will remain that way forever.

Mr. Willey said his problem with this is you are inviting everyone to walk through your neighborhood to sit on a park bench. Another problem is as the trees fall, who will be responsible to cut down the trees. There is an easement in Cinnamon Lake and Soil and Water is saying not to touch the fallen tree. Mr. Gentile said Soil and Water will come in periodically to remove timber. Mr. Willey said that they are not doing so.

Mrs. Uffman-Kirsch said she has two large conservation easements in her ward both held by Soil and Water. Historically if trees fall they are supposed to be left alone unless they are blocking a waterway. If they are blocking a waterway, Soil and Water is to be contacted and they will determine based on the homeowners association or whoever is the official party for the developer and Soil and Water how it will be handled. In one case it was determined by the residents and Soil and Water that the residents would be authorized to remove the debris. It is spelled out in the easement who will do what is necessary.

Mr. O'Donnell said that the easements typically say that all Soil and Water will do is inspect. They are the watchdogs. They will come out periodically and check or when they are called. They do not do the work, the homeowner or property owner is required to do the work.

Mrs. Zaccardelli asked for a summarization. Mr. O'Donnell said currently as proposed the development does not qualify as a PUD because it does not have the component of public, quasi-public, commercial or office as a component of the development itself unless the plans are modified to include one of those elements.

Mrs. Uffman-Kirsch asked if Mr. Gentile knew if Soil and Water was interested in holding an easement for this particular parcel and if they were aware of the size and location. Mr. Gentile responded that they were interested. They did the first review prior to the adoption of the NOACA model ordinances. The land met their requirements.

Mrs. Uffman-Kirsch asked if this could be referred back to Planning Commission. Mr. O'Donnell recommended that the Council Public Hearing be held. The developer should be asked to appear at the next Building & Building Codes Committee meeting on July 18, 2005. The developer should be asked if they have any objection to asking for a reconsideration of the Planning Commission on this project. If they say no, then the issue in front of Council is that Planning Commission has made its recommendation.

Further discussion involved the business component of the PUD. The intent is to bring in business within the PUD and how it relates to the adoption of the Master Plan.

It was decided to hold the Council Public Hearing and leave this in Building & Building Codes Committee for further discussion.

Mrs. Zaccardelli moved to adjourn the meeting. 3 yeas/0 nays. Meeting adjourned at 7:26 p.m.