

SPECIAL MEETING OF THE COUNCIL OF THE VILLAGE OF SILVER LAKE

Monday, July 23, 2007

6:00 p.m.

The Village of Silver Lake Council met in a special session on Monday, July 23 2007, at Silver Lake Village Hall, 2961 Kent Road, Silver Lake, Ohio.

The following members were present and attended the 6:00 p.m. Planning and Zoning Commission meeting: Mr. Christopher Scott, Mr. Adrian Achtermann, Mrs. Carol Steiner, Mr. William Church, Mr. Don Alexander, Mr. Gerald Jones, and Mrs. Karen Fuller.

With President of Council, Mrs. Carol Steiner, presiding, the special meeting of Council was called to order at 7:15 p.m.

Mrs. Steiner led the Pledge of Allegiance.

The following members were present and responded to roll call: Mr. Christopher Scott, Mr. Adrian Achtermann, Mrs. Carol Steiner, Mr. William Church, Mr. Don Alexander, Mr. Gerald Jones, and Mrs. Karen Fuller.

Roll call of Council: All present.

Mrs. Steiner stated the purpose of the meeting is to discuss a matter pending with the Planning and Zoning Commission. She asked Mr. Heydorn, Village Solicitor, to review with Council, what actions must be taken at tonight's meeting.

Mr. Heydorn stated, originally, the real purpose of tonight's meeting was for Council to be available in this session to consider a request for a stay, pending appeal, requested by Mr. and Mrs. Keith Ruffner, 3009 Oakridge Drive, reference a proposed service driveway at the Dimiceli residence, 3011 Oakridge Drive if the Planning and Zoning Commission turned down said request. The appeal is on the Architectural Review of the Planning Commission approval of the project.

During the Planning Commission which Council attended earlier this evening, a stay was granted by the Commission for all appeals on the matter. Mr. Heydorn stated the time requirement for Council will be a much shorter period than will be required for the entire appeal process. In effect, the longest period for stay was granted by the Planning Commission.

Mrs. Steiner asked, no matter what Council does with the appeal, the matter might go other places?

Mr. Heydorn stated an aggrieved party can take Council's decision, if the party does not agree to it, to the Court of Common Pleas. Council will hear the appeal based on the Architectural Review because the ordinances place Council as an intermediary administrative body hearing this particular case before it gets to Common Pleas Court.

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The bigger issue, is what is the range of appeal that Council can undertake in terms of what evidence Council can look at and what things can be determined from that evidence. Obviously, if this was a regular appeal to the Common Pleas Court, it's laid out in statute as to what kinds of evidence may or may not be added to an existing record for Council to make a decision. There are no such similar rules laid out for Council in the Zoning Code.

So, in effect, what Council does here, by way of additional evidence more than the record, is really up to Council to decide. The normal procedure is that appeals are generally heard on the record that has been created, so that Council sees what has happened and considers whether the evidence presented was good evidence or bad evidence. But, really, what Council should be looking for in the record would be those kinds of things that will present themselves as evidence. For example, "What distance is it from this to this?" Mr. Heydorn mentioned that, on a more opinionated, but never-the-less evidentiary level, the record reflects there was a real estate person who gave an opinion about whether or not the value of the Ruffner's property would be decreased. That could be considered evidence if Council thinks it is credible. Obviously it is subjected to Council making a determination if it wants to receive it or not, primarily because Mr. Heydorn does not know if the evidence was given under oath. Assuming that might be a defect that is waived, Council can still decide whether or not it is credible evidence. Then, if someone petitions Council and says they have additional evidence to present, which for some good reason was not previously presented, Council can exercise its discretion as to whether or not it wants to hear the additional evidence.

Mrs. Steiner asked if Council would uphold the appeal, does it still go to another court, or is Council the final say in the matter?

Mr. Heydorn answered that it may go to court beyond Council.

Mrs. Steiner added "If the other party wishes to pursue it."

Mr. Heydorn agreed. Either party could pursue an appeal.

Mrs. Fuller asked if there is any time limit under which Council must make a decision? Is there a time limit under which the next appeal must be made or is it open-ended?

Mr. Heydorn, in response to the latter question responded the appeal must be made within thirty days. It runs from the time that Council's decision is formalized by approval of the minutes from that meeting or some other manner of formalization such as a written signed order prepared the night of the decision. An oral vote would not be enough to start the appeal time.

Mr. Heydorn stated all appeals must follow the prescribed steps. The Architectural Review appeal must be heard by Council before it can go to the next step of Common Pleas Court.

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Mayor Hovey asked how long may Council take to decide the matter. Does Council have to decide that night?

Mr. Heydorn stated he did not read of any time frame requirement in terms of when it should actually be decided. The other interesting thing about this is that the decisions he's read have been very clear on the concept that, since Council is not sitting as a legislative body but as a quasi-judicial body, then Council's deliberations can be made behind closed doors. The actual vote must be done in some fashion in public or announced in public.

Mr. Jones asked if this matter can be something Council can take under consideration this evening?

Mr. Heydorn stated basically the way the ordinance reads is that Council must take the appeal under consideration at its next regular Council meeting.

Mrs. Steiner stated she believed the matter is really not a function of a Council meeting.

Mr. Heydorn stated nevertheless, it is what the ordinance states.

Mr. Church stated Council could agree to meet two hours before the next Council meeting and discuss it behind closed doors.

Mr. Heydorn stated Council must hear the evidence and hear the arguments first and then go behind closed doors for discussion, just as a jury would go to a jury room, and then come out with the decision and make a roll call vote. Evidential hearings are performed in public.

Mr. Heydorn stated the minutes of the Planning and Zoning Commission will be resubmitted to Council and each side could speak if they so wish to do so.

Mr. Jones asked if Council is free to question the parties?

Mr. Heydorn stated yes, Council may ask questions of the parties.

Mrs. Steiner asked if Council is ruling on one aspect, or the whole thing?

Mr. Heydorn stated Council will be ruling on only one matter, the Architectural Review. Council will consider whether or not the Planning Commission's decision is consistent with the Architectural Review standards set forth in the Village ordinances. Council will determine whether that decision should stand or be reversed.

Mrs. Steiner asked if Council could be given something which outlines the Architectural Review standards.

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Mr. Heydorn stated the information is in Council members' copies of the Codified Ordinances.

Mr. Jones asked if the appeal is something that must be taken up at the next meeting, or could Council call a special meeting? Mr. Jones stated he will not be in attendance at the August 6, 2007, meeting but he would like to be involved in the decision.

Mr. Heydorn stated Council must take up the matter at the August 6, 2007, Council meeting, but Council could continue it to whenever Council wants to.

Mrs. Steiner asked if Council could set a date at the next meeting to discuss the appeal?

Mr. Heydorn asked what prohibits Council from rescheduling the regular meeting?

There was considerable discussion on who would be available during the next two weeks. Various Council members expressed their unavailability to meet during that time period. It was finally decided that the appeal be taken up at the August 6, 2007, Council meeting which would then be adjourned until 5:00 p.m. on Monday, August 20, 2007, to continue the August 6th meeting for discussion on the appeal.

Mr. Heydorn suggested a formal notice be made to the parties involved. The notice should state that the parties are entitled to present argument and such additional evidence to the record as Council may allow. Otherwise the appeal will be heard on the existing record.

Mr. Church apologized to the Ruffners and Dimcelis. He stated it is not Council's intention to "scare" either party by inquiring into the appeal process put before Council.

Mrs. Ruffner stated she and her husband appreciate it because they cancelled their own vacation to be present this evening. She asked if all of Council's proceedings will be under oath?

Mr. Heydorn stated yes, if additional evidence is allowed to be presented; if it is argument, then no. If Council allows the additional evidence, then the oath will be administered to whoever presents the evidence. The parties must state what additional evidence will be presented and why the evidence could not have been presented at the lower level.

Mr. Church stated Council has been given copies of meeting minutes that go back from December of 2005 to July 9, 2007. Council was in attendance at this evening's Planning Commission meeting and heard information. Council has a copy of Mr. Heydorn's opinion reviewing the driveway proposal and a copy of the request for stay and appeal from Mr. Ruffner. Mr. Church asked if Council has been given everything?

Mr. Heydorn stated the record that will be transmitted to Council will be in a packet and will be presented to Council on the appeal, but will be on file with the Clerk of Council if Council members want to "get their hands on it" before then. The record is what's coming up from the

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lower body. It will contain everything they (the Planning Commission members) considered to make their decisions.

What Council heard tonight at the Planning Commission meeting has no bearing on the Architectural Review. It would be the minutes that went up to the point where the Planning Commission approved the minutes of the meeting where they made the decision approving the Architectural Review.

Mrs. Steiner stated then Council has been given everything regarding the appeal.

Mr. Church stated they have everything except for the human side of the matter. Do we have the emotions, feelings, rationale of the matter? Could Council hear those again?

Mr. Heydorn stated obviously they will be given to Council in argument.

Mrs. Steiner stated Council could listen to the tape recordings of the proceedings.

Mr. Heydorn stated if Council wants the record to be transcribed, then it could be done. Council can elect to listen to the tapes or ask that they be transcribed. He added that either party in the appeal can request, at their cost, that the minutes be transcribed.

Mr. Ruffner stated he has read the minutes. Some of the things said at the meeting, even though they may be embarrassing, should be in the minutes to reflect the emotions of the parties.

Everyone was speaking at once at this point so conversation was indiscernible.

Mr. Heydorn reported Suzanne Lipan just told him the Architectural Review was only discussed at one meeting. He suggested having the tape available by anybody who wants to listen to it, but also suggested the minutes might as well be transcribed because those can then be filed with the court.

Mr. Don Rauckhorst, 3001 Oakridge Drive, stated there was much testimony after the Architectural Review meeting that is very relevant to the real reasons behind the rationale and the emotions. If the transcription is limited to the Architectural Review, then Council is going to miss the majority of what should be heard.

Mr. Heydorn stated the problem with Mr. Rauckhorst's suggestion is that what went into the Architectural Review aspect is the only thing Council needs to deal with. The other issues are left to the other bodies of appeal to consider. Council is only looking at a narrow issue.

Mrs. Steiner asked for Mr. Heydorn's confirmation on what section of the code she needs to read.

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Mr. Heydorn stated Chapter 1151 is the one on Architectural Review. He further stated the standards the Architectural Review Board are contained in Section 1151.01(b) and 1151.04 which goes down through a list of things. In general, whatever is done must promote the values that are prescribed in 1151.01(b).

Mr. Ruffner stated, with regards to Section 1151.08, the section is convoluted and intertwined and catches all of the other ordinances. It really charges the Architectural Review with “Unless otherwise specifically stated herein, it is not intended that this chapter repeal, abrogate, annul or in any way impair or interfere with any existing provision or law or ordinance” so all of the other ordinances that have to do with driveways, and affecting the neighbor’s property, the character of the neighborhood, in his interpretation, are really kind of incorporated into that section of the Architectural Review. It has been very difficult to determine “which channel are you on”. Are you on Architectural Review or are you on something with Planning (Commission)? More information is better than less information, and Council could consider, with instruction from Mr. Heydorn, as to “ignore this, pay attention to this.”

Mr. Heydorn stated, at this point, he and Mr. Ruffner could disagree on the point just made about the effectiveness of 1151.08. Mr. Heydorn’s interpretation says the enactment of 1151 doesn’t portend to appeal so that theoretically if you find that the standards in this ordinance were permissible, and they were properly applied, then you complied with 1151.08. The standards were designed to be properly applied, not to abrogate any of the other ordinances. The concept, if you look at how general 1151.02(b) is in terms of the purpose of the ordinance itself, then what you define is that if, other ordinances are disregarded, then it would be probably proper to find that the general standards have not been properly applied. Presumably, all of the ordinances are designed to do those kinds of things that are pointed out have the same goals as this ordinance. For instance, “protection and enhancement of the attractiveness of the Municipality as it relates to residents”...you could certainly argue that having an ordinance that might be interpreted to allow only one driveway is done precisely for that purpose. Without considering that ordinance offhandedly, you might say to yourself that two driveways would detract from the attractiveness of the Village. Mr. Heydorn asked if Council sees the interplay. But you’re really not deviating from the standards that are set out here, it’s just to see if the standards are consistent with the Zoning Code.

Mrs. Steiner stated Council needs to read Chapter 1151.

Mr. Heydorn agreed. The fact that there appears to be two driveways instead of one, how does that fit with the protection and enhancement of the attractiveness of the Village, and so forth.

Mrs. Steiner stated, for clarification, Council will meet August 6th, Council will do whatever it needs to do to so that on August 20th, Council will hear from both parties and deal with the appeal then. The time was set for 5:00 p.m. on August 20th.

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Mrs. Spohn indicated that it will give plenty of time for a notice to the parties. She asked if Council wanted all of the minutes transcribed?

Mr. Heydorn stated only the meeting dealing with the Architectural Review should be transcribed.

Mr. Church stated Council will hear from both parties on that day. Will Council hear the rationale at that time? Is it really all that important to transcribe the Architectural Review?

Mrs. Steiner suggested that emotions of the meeting shouldn't play a part in the decision.

Mr. Heydorn stated it is the "digesting" aspect of the minutes which lead to the discretion of leaving something in or taking it out. All of the details of the rationale might not be there (in the approved minutes already prepared). Mr. Heydorn stated Suzanne Lipan does an excellent job with the minutes. But, you don't know what was left out until you listen to what was actually said. From a judicial and evidentiary standpoint, you get the digest instead of the actual discussion.

Mr. Ruffner asked if Mr. Heydorn stated that either party could insist on the transcription of the minutes?

Mrs. Fuller stated she felt the emotion in what she already read from the minutes. She said Council could take some time to listen to the tape of the meeting.

Mr. Heydorn stated, it is true, that if the tapes are submitted, then that would suffice the requirement of having the record available to look at. If Council decides that is good enough, then the Ruffners would have to pay the cost of having the minutes transcribed.

Mrs. Ruffner asked if only the two aggrieved parties would be in attendance at the meeting, or is this going to be a neighborhood situation because it is an Architectural Review appeal. Would the neighbors be notified?

Mr. Heydorn stated this is, by its nature, an appeal. It's not a denovo case in a sense that the process of gathering evidence will not start all over again. What the neighbors have already said will be on the record as the minutes or on the tape. If part of the Ruffner's presentation requires the presenting of other evidence, then Council must be asked and a reason must be given.

Mr. Church stated it would be wonderful to hear from only the two couples.

Mayor Hovey asked if the parties will be notified that Council will be taking the matter up on the August 6th and adjourning until August 20th.

Mrs. Spohn stated she will make sure the parties understand what Council intends to do.

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Mrs. Ruffner stated she and her husband appreciate the time spent by the members of Council on this matter.

There being no further comments or questions, Mrs. Steiner adjourned the meeting at 8:00 p.m.

APPROVED:

Carol A. Steiner, President of Council

ATTEST:

Teresa M. Spohn, Clerk-Treasurer