



November 18, 2019

REGULAR COUNCIL MEETING – 7:00 P.M.

The Council of the City of Cortland met in regular session on Monday, November 18, 2019 at 7:00 p.m. at the City Administration Building, 400 N High St, Cortland, Ohio with Council President Deidre Petrosky presiding. Members of Council present were James Edwards, Kathy Fleischer, Patti Keller, Don Moore, Kevin Piros and Scott Rowley. Also present at the meeting were Mayor Woofter, Law Director Wilson, Finance Director Gibson, Police Chief Morris, Fire Chief Rea, Service Director Wittman and the Clerk of Council Horn.

A motion to approve Council Minutes from the November 4, 2019 Regular Council Meeting was made by Councilmember Moore and seconded by Councilmember Rowley. **ROLL CALL** - Edwards, aye; Fleischer, aye; Keller, aye; Moore, aye; Petrosky, aye; Piros, aye; Rowley, aye. **MOTION PASSED**

A motion to approve Schedule of Bills to be paid totaling \$ 51,892.60 was made by Councilmember Piros and seconded by Councilmember Rowley. **ROLL CALL** - Edwards, aye; Fleischer, aye; Keller, aye; Moore, aye; Petrosky, aye; Piros, aye; Rowley, aye. **MOTION PASSED**

OLD BUSINESS:

ORDINANCE O-40-19 - An Ordinance authorizing an agreement for legal defense for indigents was read and moved for second reading by Councilmember Rowley and seconded by Councilmember Fleischer. **ROLL CALL ON O-40-19** - Edwards, aye; Fleischer, aye; Keller, aye; Moore, aye; Petrosky, aye; Piros, aye; Rowley, aye. **ORDINANCE PASSED SECOND READING**

NEW BUSINESS:

RESOLUTION R-38-19 - A Resolution authorizing the Chief of Police to obtain any and all funds held by Midland National Life Insurance Company was read and moved by Councilmember Moore and seconded by Councilmember Piros.

POLICE CHIEF MORRIS - A resident of our community passed away and left the police dept, as the beneficiary, her life insurance policy. It's a little over \$13,000. Part of the paperwork requires a resolution allowing me to accept the money. We are very grateful for her generosity. We are certainly sorry for her family's loss.

LAW DIRECTOR WILSON – I'd like to make a note that this is similar, in scope, to I think about 6 or 8 months ago, when we authorized Patti to work with unclaimed funds in Ohio from the state budget. We are authorizing the Chief to work with this company to obtain the funds.



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ROLL CALL - Edwards, aye; Fleischer, aye; Keller, aye; Moore, aye; Petrosky, aye; Piros, aye; Rowley, aye. **MOTION PASSED**

ORDINANCE O-41-19 - An Ordinance authorizing an application to participate in the Ohio Public Works Commission State Capital Improvement Program and/or Local Transportation Improvement Program for the 2020 Asphalt Resurfacing Program and to execute contracts as required was read and moved for first reading by Councilmember Rowley and seconded by Councilmember Edwards.

SERVICE DIRECTOR WITTMAN - I would like to go on the record, as I reported at the last meeting, this is for a \$75,000 grant towards resurfacing, with the city kicking in about \$118,000 in local share for that.

COUNCILMAN MOORE - These are the scheduled streets for next year?

SERVICE DIRECTOR WITTMAN - Yes. Based on the competitiveness of the funding applications, we are required to do these streets. Now, if for whatever reason, the cost of asphalt plummeted and we couldn't spend the \$192,000 on these streets, we can't go out and do other streets. That being said, this is only going to be one part of our annual resurfacing program. We will be looking at adding additional streets when we go out to bid as part of a single contract, kind of a Part A and Part B for bookkeeping purpose.

COUNCILMAN MOORE – It's how we did it this year too, isn't it?

SERVICE DIRECTOR WITTMAN – Yes, it is.

ROLL CALL ON O-41-19 - Edwards, aye; Fleischer, aye; Keller, aye; Moore, aye; Petrosky, aye; Piros, aye; Rowley, aye. **ORDINANCE PASSED FIRST READING**

ORDINANCE O-42-19 - An Ordinance authorizing an application to participate in the Ohio Public Works Commission State Capital Improvement Program and/or Local Transportation Improvement Program for the Mecca Street Resurfacing and Intersection Improvement Upgrades and to execute contracts as required was read and moved for first reading by Councilmember Rowley and seconded by Councilmember Piros.

SERVICE DIRECTOR WITTMAN – Here again, this is a \$224,000 grant. When we program resurfacing with the federal highway funds, the city has a local share responsibility at 20% of that total project cost. Being that this project is north of \$1 million, this \$224,000 will cover the city's local share; and much like Main St, we will have the improvements done with no or little cost to the city.

COUNCIL PRESIDENT PETROSKY - Outstanding. Thank you.



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ROLL CALL ON O-42-19 - Edwards, aye; Fleischer, aye; Keller, aye; Moore, aye; Petrosky, aye; Piros, aye; Rowley, aye. **ORDINANCE PASSED FIRST READING**

REPORTS:

FINANCE DEPT REPORT:

FINANCE DIRECTOR GIBSON – You have my report. I have nothing else to add. I'd be happy to answer any questions.

COUNCILMAN MOORE – Anything new on the audit, Patti?

FINANCE DIRECTOR GIBSON – It's still on the state manager's desk. He's reviewing it.

POLICE DEPT REPORT:

POLICE CHIEF MORRIS – Tonight we swore in Terry Maffitt as a part time officer. He was with us before from 2000 to 2012. He left us for a while and now he's back. He works full time for the State Highway Patrol as a radio technician. So, he's got the knowledge of working on these MARCS radios and he has the ability to work on our cruisers. He will be a huge asset to us in many different facets. We are certainly happy to have him come on board. Other than that, I have nothing, and I'll entertain any questions you might have.

FIRE DEPT REPORT:

FIRE CHIEF REA – You have my monthly report. I have nothing else to add. I'd be happy to answer any questions.

SERVICE DEPT REPORT:

SERVICE DIRECTOR WITTMAN – You have the monthly report. I want to add that the construction started last week on the Cedar Dr Waterline Project. They are out there early, 7:00 am. One morning, when it was cold weather, they got the equipment started a little earlier and I received a few calls on that. I'm just reminding the residents that the noise ordinance is in effect from 7:00 am to 11:00 pm, so they are adhering to the working hours as allowed by city ordinance. Hopefully, the majority of the work will be done here in the next 2 to 3 weeks.

MAYOR'S REPORT:

MAYOR WOOFER – I don't really have much at all. I want to announce that the group that put on the Veterans Memorial Celebration at our new Veterans Memorial was very successful. It was well attended. Thank you for all the people that were able to come to it from the city.

We will be closed next week for Thanksgiving on Thursday and Friday. The garbage, I believe, will be one day off. Is that correct, Rhonda?



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CLERK OF COUNCIL - Yes.

MAYOR WOOFER – That’s all I have if there are any questions.

COMMITTEE REPORTS:

COUNCIL PRESIDENT PETROSKY – I would like to address Mr. Bayus’s issues and let council know that a response was sent to him regarding the concerns he aired at the last council meeting. A short letter by me which you have at your desk accompanied Don’s memo that he so articulately wrote. That was sent to Mr. Bayus today. Rather than read it into the minutes, it was lengthy, five pages all together I believe, I’d like to do a motion so that it can be incorporated so that people can read the response at their leisure.

A motion to incorporate the Service Director Wittman’s memo and the Council President Petrosky’s cover letter into the minutes of the meeting was made by Councilmember Piros and seconded by Councilmember Keller.

LAW DIRECTOR WILSON - Before you vote on the motion, I’d like to let council know that I read through Don’s response before it was finalized. I thought it was very thorough. I thought it was very appropriate. It was a very directed response to wide-ranging complaints and a lot of different issues that were raised. Don conciliated all right into a proper response. So, I had nothing to add, or subtract or edit from Don’s response. I thought it was well done.

COUNCIL PRESIDENT PETROSKY – Thank you, Patrick. I agree. Again, we do want it to be available to everyone wants to read it. Rhonda, it will be uploaded to the city’s website after the December council meeting when we vote on the council minutes?

CLERK OF COUNCIL - Correct.

COUNCIL PRESIDENT PETROSKY – So, if anyone saw the video from the last meeting and they want to read the answers, you will have to wait until tonight’s meeting minutes get approved which will be after the first meeting in December.

SERVICE DIRECTOR WITTMAN – As a caveat, if they have a real strong desire not to wait another two weeks, they can send a request either to council or to city hall and we will get that taken care of as a public records request.

ROLL CALL - Edwards, aye; Fleischer, aye; Keller, aye; Moore, aye; Petrosky, aye; Piros, aye; Rowley, aye. **MOTION PASSED**



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LETTER FROM COUNCIL PRESIDENT DEIDRE PETROSKY TO GERALD BAYUS JR.:

Mr. Gerald Bayus Jr.
101 Leckrone Way
Cortland, OH 44410

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Dear Mr. Bayus,

As I indicated to you at the council meeting on November 4, 2019, I am submitting the following response on behalf of Cortland City Council. I asked Don Wittman to provide information on the issues that you presented. I received the attached articulate response.

I would like to expound on a few points. Don stated, "Tree clearing does not constitute excavation or grading." His rationale is further supported by the legal definition of excavating. "Excavation means any manmade cavity or depression in the earth's surface, including its sides, walls or faces, formed by earth removal and producing unsupported earth conditions by reasons of the excavation." (Ohio Administrative Code 4123:1-3-13.) Essentially excavation means digging a hole by removing dirt.

The Ohio Building Code addresses storage of construction equipment and materials from a safety standpoint only, not aesthetically; "(C)onstruction equipment and materials shall be stored and placed so as not to endanger the public, the workers or adjoining property for the duration of the construction project." (Ohio Building Code sec 3301.2) (OAC 4101:1-33-01.)

3.) Subdivision regulations Purpose and Interpretation - The City has no duty to protect adjacent homeowners. These sections refer to the overall community, not individual lot owners.

7.) Grading. The Ohio Administrative Code 4101: 1-2-01 defines grade as "where the finished ground level slopes away from the exterior walls," not the "total clearing and leveling of a lot." The grading work consists of a rough grade and a final or finish grade, both completed after the building of the structure.

I hope these documents have provided clarification on the issues you raised. Should you have any additional specific questions or concerns, please do not hesitate to contact me.

Sincerely,

Deidre R. Petrosky



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MEMO FROM SERVICE DIRECTOR WITTMAN TO CITY COUNCIL AND PLANNING ZONING AND BUILDING COMMISSION AND MAILED TO GERALD BAYUS JR.:

MEMORANDUM

TO: City Council and Planning Zoning and Building Commission

FROM: Service Director

DATE: November 11, 2019

RE: Enforcement of Zoning Code and Subdivision Regulations

This correspondence is in response to the 10/21/19 letter sent to Cortland City Council Members and Cortland Planning Commission. The letter claims that developers are engaged in unsupervised and unmonitored development and blatant ignoring of Cortland Zoning laws. This response is rather lengthy and attempts to address the complaints in the order brought up in the letter. First thing to remember is that the Zoning and Subdivision regulations are a complex set of rules and regulations. They are to be read as a whole, and not narrowly focusing on a section or a provision.

There is a difference between building and development. Although used interchangeably, the two words have separate meanings, and each has its own set of regulations. The building of a structure will trigger the City Zoning Code while the Subdivision Regulations govern developments. The Zoning Code designates the zoning classification of property. The classification dictates the type of use that can occur on the parcel. With it comes, size, set back and building restrictions that are adhered to upon application of a Zoning Permit. Zoning typically involves the construction of private improvement on private property. The Subdivision Regulation is the procedure by which property can be improved with public utilities, roadways and divided into building lots. The level of supervision and monitoring of the activities depends on whether they fall under the Zoning or Subdivision regulations. The City is more involved in the development process for the acceptance of improvements in a subdivision. This includes a subdivider agreement, inspection and posting of a maintenance bond. While the issuance of a zoning permit typically involves the submission of a site plan with the application. Construction is monitored through the Trumbull County Building Inspection, when applicable

Maplewood Drive acceptance – This property went through the subdivision process. The Planning, Building and Zoning Commission had several reviews before the matter was submitted to Council for final approval. The following are the agenda items and the approval process; 18-06 preliminary plat approval; 10-08, 6-month extension to the preliminary plat; 01-12 Preliminary plat; 05-12 Final Plat of Petrocco Plat #11. During the concurrent review process, the subdivider agreement required the developer to submit construction plans for roadway, storm sewer, sanitary sewer and waterline. The plans also included a set of Stormwater Pollution Prevention Plans. The plans were reviewed and approved and inspected occurred during construction. As part of the Final Plat approval, the utilities were accepted for a one-year probationary period for which a maintenance bond was posted. All improvements were re-inspected prior to final acceptance. Council approved Petrocco Plat #11 for the one-year probationary period, R-11-12 and the subdivision had final acceptance with the passage of R-13-13.



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Laura Lane and Evon Circle – The approval of the Laura Lane section of Shepherd’s Hill plat relied on engineering drawings that were suspect. The individual who prepared the plans is no longer practicing engineering. The administration at the time suspended permits in the area until a fix was designed and implemented. The fix involved a series of pipes to allow the water to flow from the depression which is Laura Lane and make its way to Confusion Run. The “ditch” provides stormwater detention and stores the excess rainfall. Although the street will occasionally flood, it is no longer impassable for several hours. Working with the developer provided a cost-effective solution to a problem created by a dishonest engineer. The City has learned from its past oversight. Detailed checklists for the subdivision approval process were developed. Regarding the appearance of the multi-family units on Evon Circle, the City does not have regulations regarding landscaping.

In 1995, the City adopted the zoning classifications that are now in place. Prior to this, property with the Residential zoning classification could be developed as a mix of multi and single family. Most of the property in the City that was zoned Residential was given the designation Residential Multi-family, RM, to continue with this past practice. As development progressed, this allowed the creation of single family or multi-family lots. For example, Deer Creek Estates is zoned RM, but by ordinance, the width of the lots would only allow the construction of single-family homes. In other areas, property owners have initiated zone change requests from RM to Single family, R10, R12 or R15.

Residential Multi-family – Leckrone Way is a portion of the Gemwood Knolls subdivision which has 6 single family homes that are currently zoned Single Family Residential, R-10. The street was changed to single family residential from residential in 1991. Leckrone Way remains an island surrounded by parcels zoned Residential Multi-family. The City never took any steps to re-zone the surrounding area to R-M. Prior to the construction of Leckrone Way, several multi Multi-unit apartment complexes were present and condominiums in the Gemwood Knolls were planned.

Owner Occupied v. Rentals – The City does not regulate the type of occupancy of structures. It is precluded from regulating the ownership or relations of the people in residences. This type of regulation has been deemed discriminatory and struck down as unconstitutional. The type of structure does not dictate the type of individual that will live there. Single Family residential, condominiums, and duplexes have the potential to be rental properties and cannot be regulated otherwise

Regarding the events of June of 2017, the developer had obtained Zoning Commission approval but had yet to apply for the zoning permit. The official complaint was first sent to the Law Director and OhioEPA. I was never contacted directly. Some site preparation for the duplex construction had started prior to obtaining the zoning permit. Site preparation typically involves the clearing of trees in order to perform the lot layout, required in the zoning permit application. Tree removal is not an activity which requires zoning permit approval. This has been confirmed in an e-mail with the Law Director in which it says, “no laws against clearing your own lot.” A zoning permit is required prior to land being used, occupied, excavated or graded and before a building or other structure is erected, structurally altered, added to or moved. Tree clearing does not constitute excavation or grading. Additionally, there are no requirements for leaving a buffer within a residential district and property owners are free to remove all the trees if they so desire. Therefore, the neighbor legally removed trees from his property. The complainant had just grown accustomed to the free privacy that the natural, wooded lands of someone else had afforded him.



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He constructed a privacy fence from reclaimed pallets and planted a significant number of trees and shrubs. Any money spent by the complainant was on his property to address the loss of privacy and attempt to restore a screening.

Trumbull Soil and Water – Marcus Hollenbank had called to tell me that he never said, “the City does not enforce its zoning regulations.” The City and TS&W maintain a good working relationship. Under a Memorandum of Understanding, the TS&W does the permitting for individual lot and subdivision Erosion and Sediment Control Plans. They perform the inspection, issue letters of deficiencies and close the permit when the work is completed, and site stabilized. There have been violations letters sent to several builders. This is typical in the inspection process. I will gladly forward the letters to members if desired.

Regarding the landscaping, the former neighbor purchased a ten (10) strip of land along the rear lot line. This was offered by the developer prior to platting. Some property owners purchased when offered and others did not. I would guess the money spent by the neighbor was on grading and landscaping the newly acquired property. Most of the photos show standing water at the rear of the parcel on Maplewood. This was during construction and prior to the lawns maturing. Any work done by the Leckrone Way neighbors appears to have trapped water and exacerbated the issue. The water accumulates along the lot line, but it does not leave the property.

There is no guidance in the Zoning or Subdivision code about the storage of materials during construction. As discussed above, clearing of trees is not an activity requiring a permit. The storage of dirt and construction materials is also not regulated.

The “lands behind the High School” is a development that has stalled due to the housing recession and the regulatory requirements for the stream mitigation and wetland restoration. The monitoring and enforcing these regulations are deferred to the Ohio EPA and the Army Corp of Engineers, the agencies charged with these regulations. The portion of Stonewood Drive remains partially developed. The water, sanitary and storm sewer as well as the road base has been installed. If the development is re-started, the City will ensure compliance with the subdivision regulations and the codified ordinances.

“Issues related to enforcement (or non-enforcement) of City Zoning Regulations”

1.) 1125.15 Foundations – This is a matter subject to interpretation. The City Planning, Zoning and Building Commission approved the plans for the duplexes. The proposed construction called for a block foundation and did not call for a basement. The foundation consists of a poured footer, concrete block walls and a concrete slab between the walls on the interior of the structure. This complies with part b.) of the zoning ordinance. The intent of the regulations was to ensure that modular homes and trailers were built on a foundation. The construction method complies with the Ohio Building Code as enforced by the Trumbull County Building Inspection.

2.) 1131.02 Zoning Permits and Application Procedure – As discussed above, clearing the land of trees does not require a zoning permit. Sometimes lot clearing is required to perform lot layout. The developer has obtained the necessary zoning permits and approvals for the construction of the dwelling units.

3.) 1181.03 – Purpose – This legislation is found in the subdivision regulations. It is not applicable for the Zoning Permit application process. It is enabling language that give general guidance to the subdivision process. It provides the basis for the regulation and grants the



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authority of the City to regulate and infringe on an individual property rights, without being determined unconstitutional. These are general guidelines and considerations to be used are during the subdivision approval process.

4.) 1181.04 – Interpretation. Also, applicable to the subdivision regulations and not the zoning code for which individual lots are regulated.

5.) 1193.02 (e) LOTS; Flooding and Poor Draining - Also, applicable to the subdivision regulations and not the zoning code for which individual lots are regulated. This was applied to the Petrocco Plat #11 and Maplewood with the preservation of a buffer adjacent to the wetlands and stream bisecting the original parcel.

6.) 1198.01 Erosion Control General - Also, applicable to the subdivision regulations and not the zoning code for which individual lots are regulated. The developer has complied with the requirement for individual lot Erosion Control as required by the Trumbull Soil and Water Conservation District.

7.) 1199.01 Grading, General - Also, applicable to the subdivision regulations and not the zoning code for which individual lots are regulated. All improvements on Maplewood were inspected, accepted, maintenance bond issued, and final acceptance after the one-year probationary period expired. The current administration is fully aware of the issues that occurred with Laura Lane and have implemented policies and procedures to strictly follow the subdivision regulations.

8.) 1125.12 Drainage System Requirements -This provision does not apply to single family residential and residential lots under one-half acre. It is generally applicable for construction outside of a subdivision, commercial lots where a storm system does not exist. The duplex is connected to the approved storm sewer system and meets the city ordinances.

9.) The development for Maplewood Drive was approved and accepted in 2013. All subsequent duplexes constructed were reviewed and approved by the Planning, Zoning and Building Commission. A zoning Permit was issued upon application.

The complexity of Zoning and Subdivision Regulations makes it sometimes difficult to navigate. However, my years of experience in application to several developers and builders has provided a solid foundation. Rest assured that the proper procedures and approvals have been adhered to throughout the entire development and building process. Feel free to contact me directly if you have any questions or concerns.

NO QUESTIONS OF COUNCIL FROM AUDIENCE

A motion for an Executive Session to discuss personnel to include City Council, Mayor, Law Director and the Finance Director was made by Councilmember Piros and seconded by Councilmember Moore. ROLL CALL - Edwards, aye; Fleischer, aye; Keller, aye; Moore, aye; Petrosky, aye; Piros, aye; Rowley, aye. MOTION PASSED



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COUNCIL VICE-PRESIDENT PIROS – Dee Dee, we will not be returning to council chambers after the Executive Session adjourns, correct?

COUNCIL PRESIDENT PETROSKY – That is correct. Please put that in the record.

A motion to adjourn the meeting was made by Councilmember Piros and seconded by Councilmember Moore. **ROLL CALL** - Edwards, aye; Fleischer, aye; Keller, aye; Moore, aye; Petrosky, aye; Piros, aye; Rowley, aye. **MOTION PASSED**

Meeting adjourned at 7:35 p.m.

CLERK OF COUNCIL

PRESIDENT OF COUNCIL