

**CITY OF WILLOWICK
LAKE COUNTY, OHIO
MINUTES AND PROCEEDINGS OF REGULAR MEETING OF COUNCIL**

DATE: January 20, 2015
PLACE: City Hall
TIME: 7:30 p.m.

The second meeting of Council was called to order by Council President Patton at 7:30 p.m., followed by the Pledge of Allegiance to the Flag and the Invocation.

Present: Council members Reho, Patton, Wells, Turk, Regovich and Vanni.
Absent: Councilman Malta.
Also Present: Mayor Bonde, Police Chief Lazor, Service Director/Chief Building Inspector Dominick, Law Director Lucas, Finance Director Benedict, City Engineer Lannon, Recreation Director Kless and Council Clerk Wovrosh. Fire Chief Posipanka was not in attendance.

Mr. Patton stated that the agenda will be reordered with the two Administrative Appeals being addressed at the end of the meeting.

Approval of Minutes

Motion by Mr. Vanni, seconded by Mr. Regovich to approve the minutes of the Regular Meeting of Council of January 6, 2015.

Discussion: None.

Vote: All ayes. Motion carried.

Appointments, Special Resolutions & Proclamations

Motion by Mr. Vanni, seconded by Ms. Turk to appoint John Heckman to the Planning Commission for a three-year term ending December 31, 2017.

Discussion: None.

Vote: All ayes. Motion carried.

Mayor Bonde administered the Oath of Office was administered to Mr. Heckman.

Motion by Mr. Vanni, seconded by Mr. Wells to appoint Walter Sefick to the Planning Commission to complete a vacated term ending December 31, 2016.

Discussion: None.

Vote: All ayes. Motion carried.

Mayor Bonde administered the Oath of Office was administered to Mr. Sefick.

Motion by Ann Turk, seconded by Mr. Vanni to appoint Rena Perchinske to the Recreation Board to fill a vacancy for a term ending December 31, 2016.

Discussion: None.

Ms. Perchinski was not present at the meeting.

Administrative Appeals

The Administrative Appeals were moved to the last item on the agenda.

Reports and Communications from the Mayor/Safety Director

Mayor Bonde reported the following:

- Budget notebooks are available for Council members. He expressed appreciation to Finance Director Benedict for her work in a challenging financial situation.
- County Administrator Jason Boyd called a meeting with the western Lake County mayors to discuss ways the County can work more closely with mayors on certain projects.
- All openings on Boards and Commissions have been filled.
- The city's foreclosures for the fourth quarter of 2014 as well as delinquent property taxes owed to the city were reviewed. He explained a potential program for selling the debt of the delinquencies to an agency that specializes in collection of such accounts.
- There is a house on Clarmont available to the city, and he hopes to work with the Land Bank.

Council Discussion on the Mayor's Report

Mr. Vanni asked about the property on E. 328th Street with liens which the city owns. Mayor Bonde might see if the Land Bank could obtain the property in order to deal with the liens.

General Communications & Reports – Directors & Officials

Service Director Joe Dominick: Written report submitted. Christmas trees are still being picked up. Mr. Patton inquired about the status of street salt. Mr. Dominick reported that we are doing well, aided by pre-treating with the liquid for accumulation under 3". The price of salt is unchanged.

Recreation Director Julie Kless: No written report submitted. Seasonal staff compensation levels as well as the fees for events and programs are on the agenda.

City Engineer Tim Lannon: No written report submitted.

Finance Director Cheryl Benedict: No written report submitted.

Law Director Michael Lucas: No written report submitted. Mr. Lucas provided a summary of several agenda items. 1) There is a rezoning application for a portion of Lakewick Lane requesting a rezoning from multi-family to single family district classification. The Planning Commission has recommended approval of this. If approved by Council, this will be placed on the November 3, 2015 ballot for a vote by the general electorate as required by the Charter. 2) Work is continuing on the modification of the ordinances related to wild animals in the city and the use of a bull hook. These will be ready by the next meeting. 3) The Administrative Appeals referred to Council by the Board of Zoning Appeals related to the Willoughbeach project were reviewed.

Police Chief Lazor: The Police Department's annual report was emailed out and posted on the website. The Police Department has no objection to the transfer of a liquor license that is on the agenda. Chief Lazor thanked Mr. Dominick and the Service Department for their pre-work for the project updating the dispatch area.

Fire Chief Posipanka: Absent. The Fire Department report for the month of December was emailed.

Chief Building Inspector Joe Dominick: No written report.

Ward Matters

None.

Public Participation

Cindy Dayton of W. Willowick Drive thanked President Patton for proposing the bull hook ordinance and the Council members for taking the time to read the materials. She provided a letter from the president of Performing Animal Welfare Society.

Jackie Fisher of E. 286th Street stated she supports the circus. A ban would disrespect the Shriners who raise millions of dollars for burn victims and hospitals. Address abuse if it's evident when the circus is here. She also asked if there had been any Ohio cities have banned the circus, and President Patton did not have that information about Ohio specifically, although cities in other states have done so.

Kirk Kokal of Edgewood Drive also expressed his support of the circus. If you're not in favor of it, don't attend. If they are not making money as some claim, they won't come back.

Sandy Sajner of Painesville stated that Kelley Miller Circus is not allowed to go through the state of New York. Cities can have many activities that don't use animals that are profitable.

Carol Furman of Edgewood Drive said Council is responsible to make the decision since it is an Ordinance, citing moral and ethical values when making the decision.

A Willoughby resident stated that she reconsidered her approval of the circus when she decided it was not natural behavior for them and did not approve of their treatment.

Jennifer on E. 326th Street favors the ordinances. Said she could get a petition together if Council would want that.

Julie Gentile of Cresthaven distributed copies of an email from Tim Harrison who previously worked as a first responder in Oakwood, Ohio and dealt with a crushing injury from a circus.

An Oakdale resident felt she spoke for many who are in favor of the circus. She feels there is greater risk in having a pool than a circus. Though the cause is admirable, it is a slippery slope to take away the freedom of choice for the residents.

Scott Ivancic of Blissfield feels there is great value in using animals for educational purposes such as Jungle Terry, the Cleveland Zoo. He doesn't feel that animals should be used for entertainment.

Michelle Minarich of Glenhurst Road commended President Patton for the bull hook ordinance which is 411a good compromise. She also felt that Mr. Royal's remarks at the last Council meeting were inaccurate.

Bob Kirsch of Fern Drive feels that those who support the ban have proven their point and challenged those who support the circus to prove that animals are not hurt.

Roger Tayfel of E. 324th stated the U.S. Dept. of Agriculture regards bull hooks as legal; the circus is operating within the legal confines. Spaying and neutering provide more risk with potential death, infection, hormone imbalance, etc. as cited in government reports. Pets could be banned because of the way they are trained, confined on leashes or kept in fences since those are not natural. If people are injured during Rec Dept. programs and it costs money, so the Rec Dept. should be discontinued. Give consideration to this logic.

Kelly Gilchrist of Powell Road would prefer that those who speak in the meeting should be a residents since it is a Council meeting regarding the business of the city. She supports people making their own choice. Banning the bull hook bans the circus. President Patton drew a distinction between one ordinance which bans the use of the bull hook instrument and one ordinance that bans the circus.

Valerie Garrett of Willowick feels it is important to bring in people from outside of the city as well; it isn't self-sustaining.

Corey of Willoughby stated there's a different between wild and domesticated animals.

Doug Pintar of E. 308th inquired about uncollected property taxes that would be sold to collection agencies and if there is another way to get it back. Mayor Bonde clarified that the city would get the full amount from the agency.

Reports of Standing Committees

Finance: No report.

Safety: No report.

Service, Utilities & Public Lands: No report.

Streets, Sidewalks & Sewers: No report. Mr. Vanni scheduled a meeting of the committee on Tuesday, February 3 at 6:45 p.m. to discuss the Safe Routes to School program and Lake County Stormwater program.

Tax Compliance: No report.

Moral Claims: Ms. Turk requested to bring back the moral claim that was tabled at the last meeting. It dealt with a resident whose glasses were broken during transport. She reported that Mr. Smith's insurance company would not cover the replacement cost due to his deductible.

Motion by Mr. Regovich, seconded by Mr. Vanni to bring the moral claim submitted by Gene Smith back to the table.

Discussion: None.

Vote: All ayes. Motion carried.

Motion by Mr. Vanni, seconded by Mr. Reho to approve the reimbursement of Mr. Smith for the cost of his glasses.

Discussion: In response to Mayor Bonde's question, Mr. Lucas stated that sovereign immunity is irrelevant since the nature of a moral claim is a matter of moral rather than legal propriety.

Vote: Ayes: Reho, Patton, Turk, Regovich, and Vanni. Nays: Wells. The motion carried.

Budget: No report. Mr. Vanni confirmed that the Budget Hearing is scheduled for Saturday, February 7 beginning at 8:30 a.m.

Liaison Reports

Ms. Turk reported that tickets for the Hearts and Hammers fundraiser are sold out.

Fund Transfers & Bid Authorizations

None.

Contract Approvals

None.

Introduction & Consideration of Legislation

Ordinance No. 2014-55
(Law Director)
(1st Reading 12-16-14)
(2nd Reading 1-6-15)

An Ordinance amending Chapter 505 of the Codified Ordinance of the City of Willowick, Ohio, "Animals and Fowls;" and specifically establishing Section 505.20, titled "Wild and Exotic Animals in Travelling Shows and Circuses." **(Tabled 1-6-15)**

Ordinance No. 2014-55 remained tabled.

Ordinance No. 2014-56
(Law Director)
(1st Reading 12-16-14)
(2nd Reading 1-6-15)

An Ordinance amending Chapter 505 of the Codified Ordinance of the City of Willowick, Ohio, titled "Animals and Fowl;" and specifically establishing Section 505.19, titled "Prohibition of the Use of Bull Hooks and Similar Devices." **(Tabled 1-6-15)**

Ordinance No. 2014-55 remained tabled.

Ordinance No. 2015-1
(Law Director)

An Ordinance providing for the compensation of seasonal and part-time employees of the City of Willowick Recreation Department, and declaring an emergency.

Motion by Mr. Regovich, seconded by Ms. Turk to waive the three readings for Ordinance No. 2015-1.
Discussion: None.
Vote: All ayes. Motion carried.

Motion by Mr. Regovich, seconded by Mr. Reho to adopt Ordinance No. 2015-1.
Discussion: None.
Vote: All ayes. Motion carried.

Ordinance No. 2015-2
(Law Director)

An Ordinance approving the recommendation of the Planning Commission for a proposed amendment to the Planning and Zoning Code of the City of Willowick to amend and rezone a portion of Lakewick Lane at the Shoreland Crossings development from the Multi-Family District classification to the Single Family District classification, authorizing the submission of the rezoning request to the electors of the City at the next general election, and declaring an emergency.

Motion by Mr. Vanni, seconded by Mr. Reho to waive the three-day rule for Ordinance No. 2015-2.
Discussion: None.
Vote: All ayes. The motion carried.

Motion by Mr. Vanni, seconded by Ms. Turk to waive the three readings for Ordinance No. 2015-2.
Discussion: None.
Vote: All ayes. Motion carried.

Motion by Mr. Vanni, seconded by Mr. Regovich to approve Ordinance No. 2015-2.
Discussion: None.
Vote: All ayes. The motion carried.

Ordinance No. 2015-3
(Law Director)

An Ordinance declaring the necessity of submitting to the electorate of the City of Willowick at the General Election to be held on November 3, 2015, the question of approving the passage of an Ordinance amending the Zoning Map of the City of Willowick by amending and rezoning a portion of Lakewick Lane at Shoreland Crossings Development from the Multi-Family District classification to the Single Family District classification, establishing the ballot language for the November 3, 2015 General Election ballot, and declaring an emergency.

Motion by Mr. Vanni, seconded by Mr. Wells to waive the three-day rule for Ordinance No. 2015-3.
Discussion: None.
Vote: All ayes. Motion carried.

Motion by Mr. Vanni, seconded by Mr. Regovich to waive the three readings for Ordinance No. 2015-3.
Discussion: None.
Vote: All ayes. Motion carried.

Motion by Mr. Vanni, seconded by Ms. Turk to adopt Ordinance No. 2015-3.
Discussion: None.
Vote: All ayes. Motion carried.

Miscellaneous

Motion by Mr. Vanni, seconded by Ms. Turk to approve the request to transfer a liquor license from 4Slogerms LLC, DBA Coachs II to Blake and Sus LLC, DBA Kickstart Grille @ HQ, having been reviewed by the Police Department and no objection found for the approval.
Discussion: None.
Vote: All ayes. Motion carried.

Motion by Mr. Regovich, seconded by Mr. Wells to approve the Recreation Department's 2015 Building and Program Fees as presented.
Discussion: None.
Vote: All ayes. Motion carried.

Public Participation

Sandy Stajner of Painesville again asked to see the minutes of the meeting when circus was approved to see who voted to bring the circus to the city. It was clarified that the decision regarding the circus was related to a program and would be an administrative decision. Council is a legislative body and would, therefore, not have voted to bring the circus to the city. Mr. Patton stated that Council is voting now because it is an Ordinance.

Nancy from 307th expressed concern about people who don't take care of their property and how to report it. It was stated that they can be reported to the Building Department who has inspectors as well as the Police Department.

Walt Sefick inquired about the status of the two tabled ordinances. Mr. Patton explained that items placed on the table are not considered a reading. Both Ordinances will be placed on third reading and Council will vote on them at the next meeting.

Administrative Appeals

A hearing was conducted on two Administrative Appeals related to the proposed issue for the proposed Willoughbeach development. Representing counsels were John Slagter for the applicant and John Monroe for the adjacent property owners who are opposed to the application. In the interest of full disclosure, President Patton disclosed that he is a practicing attorney and has a matter pending with a partner with Buckingham, Pete Kahoun. He also noted that he was in receipt of a petition dated the date of the this Council meeting that was signed by senior citizens in support of the Willoughbeach project along with a memorandum from Kerri Davidson. Copies were provided to both counsels and the court reporter to be included as an item produced by Council for the record.

All parties who planned to testify were sworn in at the same time by the court reporter in order to streamline the proceedings as agreed to by both counsels.

Mr. Slagter represented the applicant, The Woda Group and Willoughbeach Terrace, which is requesting that Council grant an exception permitted under our code or alternatively grant a variance for parking necessary for an age-restricted senior facility. This is due to practical difficulties and issues that have arisen related to our zoning code for this particular property.

Willowick has no senior housing, but our code permits this in a mixed-use zoning district which is where the property is located. The only variance being requested from the City is an issue related to parking. The city's current parking restriction, with no disrespect, makes no sense. As an example, a person living in a 2,000 square foot home would need 17 parking spaces to comply with the code. Present to testify was Mr. George Smerigan who has represented cities for over 30 years and provided recommendations on whether variances should be granted, written, and enforced zoning codes. He testified before the Board of Zoning Appeals the previous evening that what the applicant is requesting is completely reasonable and appropriate. With the current zoning, a 50-unit senior housing facility would require 709 parking spaces. In perspective, Shoregate Towers is not an age-restricted facility and has 609 parking spaces which is a ratio of 1.5 parking spaces per apartment. Willoughbeach Terrace would need more parking spaces than Shoregate Towers. The Woda Group is a developer which specializes in senior housing projects. A representative from Catholic Charities who also has experience in senior housing was also at last night's BZA meeting and testified that their senior facilities have a 1:1 ratio or less for parking. Other communities who have experience with senior housing facilities—Beachwood, Strongsville—also have 1:1. The practical problem with the code in Section 1163 is that it bases the number of parking spaces required in a non-residential district on the square footage of the building rather than on the number of dwelling units. The code in most communities with senior housing or multi-family usage is usually based on the number of units. Our apartment district shows three spaces per dwelling unit. It appears Section 1163 was meant more for commercial use. Relief can be granted based on two sections of the code: 1) Section 1163.03(b) regarding parking standards which provides parameters for making an exception; or 2) when asking for a variance in any section of the code, Chapter 167.02(d) provides for practical difficulties in carrying out the code, a legal standard established by *Duncan vs. Middlefield* which establishes seven non-exclusive standards. Mr. Slagter reviewed these.

Law Director Lucas wanted to ensure that the length of the Board of Zoning Appeals meeting the previous evening does not mean that there is a need to move quickly in this meeting. He wants to be sure all evidence is presented and cross-examination done as deemed necessary, regardless of the time involved.

Mr. Slagter reviewed the contents of the exhibit book which had been provided to members of the BZA and Mr. Monroe the previous evening and also to Council members. He then examined Mr. McCabe of The Woda Group and confirmed that he was familiar with the documents in the exhibit book. He asked

Mr. McCabe to review the contents of a letter to Mayor Bonde dated December 31, 2014. Mr. McCabe provided some background regarding the development of the project beginning with the response to a Request for Proposal and went on to requests for unanimous support from Council for the project and the project design, a waiver for lot size and a waiver of density. Mr. McCabe stated that he has background in architecture, worked almost exclusively for developers and he himself is now a developer. He works in residential communities and is particularly interested in senior housing. He has experience dealing with parking requirements and site design. He also has experience in health care and assisted living. He is currently Vice President of Development for Woda. Woda does multi-family housing, and over 60% of their portfolio is senior housing. He does site evaluation and evaluates the needs of a community. He focuses on choosing the right sites and stated that this site is in a wonderful location related to the Senior Center, transportation, grocery stores, banks, restaurants, etc. It is viewed positively by the Ohio Housing Finance Agency (OHFA) which has provided funding for the project. OHFA has reviewed Woda's provision for parking for this project and have found it to be reasonable, based on their experience with producing over 100,000 units. Woda has found that most people who come to these facilities either don't drive or only have one car. When providing a 1:1 ration for parking, they have found that 50% of the parking lot is never full. They have tried to be environmentally conscience by having as little asphalt as possible. It will keep all the stormwater on site and doesn't connect into the storm system but rather infiltrates into the ground, making less of an impact than the current unbuilt property. This would be Willowick's first LEED certified building meaning it is very energy efficient and results in low energy bills.

Mr. Slagter confirmed the information in the letter and cited a list of senior housing projects and their parking ratios mentioned in the letter. Mr. McCabe noted that they are not requesting any tax relief; it will be a fully taxed property that will bring in income tax from employees and residents along with those involved in the construction of the building. Mr. McCabe reviewed Exhibit C, the landscape plan for the facility based on an inspection by a landscape architect which saves a lot of the trees and preserves the natural landscape. They have also worked in over 50 different types of colorful plants which will provide a nice stepping stone between Shoregate Towers and the adjacent residential homes to which they wanted to be sensitive. The city's requirements for green space have been met and exceeded through this design.

Mr. Slagter reviewed some of the provisions of the code with Mr. McCabe. Residents voted to change the zoning of this property to mixed use district which allows for senior housing under 1141.01. When determining if a code should be varied, you look at the Purpose and Intent shown in 1141.01(a). The code encourages protecting green space which this project does, and provides the justification for this property.

Mr. Slagter confirmed with Mr. McCabe that he is familiar with the exceptions standards in the code. He confirmed also that he obtains approvals for development from other communities.

Mr. Slagter: Standard 1: Is an exception proper? Do you feel that a lesser standard than what is set forth in the code would be sufficient for the proposed age-restrictive senior housing so that public health and safety concerns would be met?

Mr. McCabe: Yes, we are addressing them by providing a better design by requesting this variance.

Mr. Slager: Do you feel that there is any detriment to the public health and safety by this body granting an exception to this parking requirement?

Mr. McCabe: No, I don't know why more parking would be desired. Even on some of the busiest shopping days, the shopping areas on the south side of Lake Shore Blvd. have vacant parking spaces.

Mr. Slagter then questioned Mr. McCabe with respect to the variance which is the practical difficulty standard, and the seven factors of Duncan vs. Middlefield:

1. Will the property in question yield a reasonable return or can there be any beneficial use of the property without the variance? Can this property be built for senior housing if 709 parking spaces are required?

It could not; 709 spaces would be above and beyond, would be unethical and would do the community a disservice.

What about building something underground? We have nothing like that in our portfolio; with the over 98% occupancy rate in the facilities we have built to date, it indicates that what we are doing meets the needs. The design is what is very typical by many developers in the state. It was agreed as a condition in building the facility that if after a year it was determined that there was not enough parking, more would be added.

2. Is the variance substantial?

No in the fact that it is unattainable to do what is proposed by the code. All the other codes have been met; this is the only variance being requested by Woda.

Do you feel that this zoning code requirement as it exists is reasonable?

In my over 10 years of work in this area, I have never encountered a code such as this.

Do you think the code requires substantially more than is necessary?

It requires an excessive amount of what would ever be necessary.

3. Would the essential character of the neighborhood be substantially altered or would adjoining properties suffer substantial detriment as a result of the variance?

I think the reduction of parking provides one of the best solutions. Who would want to live next to a massive pavement field? It fits with the character of the neighborhood.

Mr. Slagter cited that it is adjacent to a multi-family complex and across the street from commercial parking.

4. Would the variance adversely affect the delivery of governmental services (e.g., water, sewer, garbage)?

No. Reduction of parking would have no impact on governmental services. The plan has been reviewed on several occasions by the Building Department, Fire Chief and Police Chief. We have worked with them throughout the project, and they have been supportive. It would actually also decrease the impact of stormwater.

5. Did the property owner purchase the property with knowledge of the zoning restrictions?

We have an equitable title through the purchase agreement with authorization from City Council. The zoning changed by ballot prior to our involvement in the project.

Mr. Slagter cited Section 1161.05(a) that addresses development permitted and allows reasonable variances to address issues. The issue is not the size of the lot but that the zoning has an excessive requirement for parking. Coming before the body to request a variance is consistent with the city's code.

6. Would the property owner's predicament feasibly be obviated through some method other than a variance?

An exception and the variance are the only ways to solve the issue. We are trying to achieve as many things as possible within the code.

7. Would the spirit and intent behind the zoning requirement be observed?
There is significant justice and right done for the community by moving it forward and with a smart site design.

Mr. Slagter referenced Exhibits D which is the adjacent property to the east, Exhibit G related to two waivers granted by the city and Exhibit H which is a notice of the BZA hearing. These items were submitted.

Mr. McCabe also stated that his group has actively talked to residents about what would best serve the community and the needs.

Councilman Wells inquired why a basement was not in the design. Mr. McCabe responded that normally it is a matter of stability in a property located this close to the lake. It would be quite atypical and probably wouldn't be a beneficial or practical application for a building of this type.

Mr. Patton noted that Mr. Monroe was agreeable that Mr. Slagter present all his witnesses before any cross-examination.

Mr. Slagter then examined Mr. George Smerigan of Tactical Planning, LLC. Exhibit E provides his background which was submitted to Mr. Slagter. Mr. Smerigan, a professional city planner, reviewed his background and qualifications. He has been qualified as an expert witness in the fields of zoning, planning, and land development in Common Pleas Court in every county in Northeast Ohio as well as Federal District Court in both Cleveland and Akron. He contracts as the City Planner for the cities of Beachwood, Pepper Pike, Strongsville, Olmstead Falls, and Warrensville Heights. Some of these have senior housing facilities, and he has been involved in a number of senior housing projects.

Mr. Slagter asked Mr. Smerigan if he was in agreement with the decision of the Board of Zoning Appeals at the January 19, 2015 meeting. Mr. Smerigan was not in agreement and did not know how they came to their conclusion based on the evidence that was presented at the meeting. Mr. Slagter inquired if he had an opinion on the exemption and variance based on his analysis of the development and if he provided that opinion at the BZA meeting. Mr. Smerigan stated that it is his professional opinion that there is a practical difficulty that is generated by the nature of the parking requirement, an excessive parking standard which creates a practical difficulty that warrants some relief. The failure to grant relief would require six to seven parking spaces per unit and does not do justice to the property owner or the city as a whole. The parking standard is thwarting the possibility for senior housing and is not advancing the intent of the city in moving this project forward.

Mr. Slagter inquired how he came to the conclusion that 55 parking spaces would be appropriate for this usage. Mr. Smerigan's cited his experience in doing senior housing projects, and based on that experience it would provide adequate parking. Exhibit F provides a summary for senior housing parking requirements in several other communities. In addition, he identified a report by the Institute of Transportation Engineers who do traffic studies, one of which was about senior housing. One conclusion showed an average peak demand of .40 vehicles per unit. The 55 parking spaces would be 1.1 spaces per dwelling unit which is above any of the requirements of the cities cited in his summary. Mr. Slagter confirmed with him that he is familiar with Section 1163.03 of the code, the area that has the parking requirement that is at issue. He stated that it is clearly intended for non-residential rather than residential use in a mixed use district. In the 40 years that he has been doing this work, he has never

seen a parking requirement for residential uses that is based on square footage rather than dwelling units. Because of the way the code is written, it gets applied to senior housing.

Mr. Slagter asked if there is any legitimate governmental health, safety or welfare reason to enforce the zoning requirement as written in this case. Mr. Smerigan indicated that there is not; that it would actually do a disservice to enforce it as written. Mr. Slagter also inquired if he was familiar with the standards and if an exception is appropriate. Mr. Smerigan stated the code provides the authority for the board as a recommending body and Council as the final determining body to make a determination as to what the appropriate parking standard would be for this project. He believes it would be appropriate to use their authority to set the standard for the parking ratio for senior housing. Mr. Slagter inquired if an exception would be warranted to allow 55 parking spaces for the 50 dwelling units for senior age-restricted housing. Mr. Smerigan indicated that without question the exception would be warranted. Mr. Slagter confirmed that Mr. Smerigan is familiar with the variance standard that is set forth in the code.

Mr. Smerigan then addressed the Duncan vs. Middlefield factors:

1. Will the property in question yield a reasonable return or can there be any beneficial use of the property without the variance?

It clearly cannot. It is zoned for senior housing. The parking ratio is impractical to develop it for senior housing and would thwart developing it for that purpose.

2. Is the variance substantial?

The measure of whether or not a variance is substantial is not the percentage change between what is in the code and what is approved but if what is being proposed is the minimum necessary to mitigate the practical difficulty. He has provided substantial evidence to show that their request of 1.1 parking spaces per dwelling unit is a reasonable amount of parking for senior housing. What they are asking for is not a substantial variance because it is a reasonable minimum amount to mitigate the practical difficulty which is the excessive parking requirement. Adding additional parking would not have less impact on the neighbors or the environment nor would it make the site function better. The request is the minimum necessary.

3. Would the essential character of the neighborhood be substantially altered or would adjoining properties suffer substantial detriment as a result of the variance?

The property is zoned for senior housing. The issue is not the impact of the housing but the impact of the variance. The detriment to the neighboring property would be to have three or four times more parking than what is being requested.

4. Would the variance adversely affect the delivery of governmental services (e.g., water, sewer, garbage)?

Clearly it would not. The issue is if the parking variance would affect governmental services, not if senior housing would affect them, and it doesn't seem that would happen. The only impact could be storm runoff, and that would be less if the parking is less.

5. Did the property owner purchase the property with knowledge of the zoning restrictions?

Case law related to this is if there is a requirement that on its face is excessive and unreasonable, it doesn't matter if the applicant knew ahead of time. The situation is that it is a standard that doesn't apply on any property; it is an unreasonable and excessive standard.

Mr. Slagter confirmed with Mr. Smerigan that the code requires relief because it allows variances and exceptions. If you meet the standard, you have a right to those.

6. Would the property owner's predicament feasibly be obviated through some method other than a variance?
There are only two methods to solve the problem: granting an exception by making a determination about what an appropriate senior housing parking standard is or granting a variance.

7. Would the spirit and intent behind the zoning requirement be observed?
If you read the purpose and intent of that district and that this is where senior housing has been designated, but you have a standard that makes the construction impossible, it becomes financially unfeasible because of the excessive parking requirement. This standard would then not be consistent with the spirit and intent and would not be consistent with the spirit and intent when the zoning was changed to require senior housing on this property. Zoning is intended to be a tool to achieve the goal for the plan for your community; it is not an end in itself. It is clear the only way to achieve the goal and the spirit and intent is to grant the variance and the exception.

Mr. Patton asked Mr. Smerigan if, in his professional opinion, 55 parking spaces offers a sufficient amount of parking for this type of facility, and Mr. Smerigan confirmed this to be true. He also inquired if he is applying standards that are applied in the field, and Mr. Smerigan again confirmed this to be true.

Mr. Patton referenced Exhibit F, examples of senior housing parking requirements for several cities in the Cleveland metropolitan area. He asked Mr. Smerigan if the chart was used to formulate his opinion or support his opinion, to which Mr. Smerigan answered that it supports his opinion. These merely demonstrate that other communities have come to the same conclusion and that this is becoming an industry-wide standard. Mr. Smerigan then clarified that these are the standards (in Exhibit F) that are in their respective zoning codes that are set forth by ordinance; it doesn't reference particular projects.

Mr. Patton then inquired if he was aware of the sample used in the study for the report from the Institute of Transportation Engineers titled "Senior Housing Trip Generation and Parking Demand Characteristics." Mr. Smerigan indicated that it included a couple of dozen and shows the actual demand which is how they came to the average peak demand of .40 vehicles per dwelling unit for residents, employees and visitors at midday. He is comfortable with the sample size. He said the study is verifiable and compliant with generally accepted standards in his field.

Mr. Slagter expressed his appreciation for the Council's patience, and he requested that they grant the exception and variance for the parking as presented.

In response to Mr. Patton's question, Mr. Munroe indicated he had no objections to the evidence other than noting that the pictures included as evidence in Exhibit B were not taken by Mr. McCabe.

Mr. Monroe stated that he is with the law firm of Mansour Gavin LPA and represents John Bartone and Eva Frano of the neighboring property to the west. They live in the house on the lake and rent out the house closer to Lake Shore Blvd. They are requesting Council to affirm the recommendation of the BZA which voted 2-3 to not give a recommendation for the requested exception (1163.03(b)) and variance (1167.02). Their decision was well supported by the law and the evidence presented. The BZA heard from Joe McCabe, a representative from Catholic Charities, George Smerigan, John Bartone, Eva Frano and Mr. Bush who represented Shoregate Towers and stated that their parking is at capacity and beyond. BZA reviewed the same evidence that was now before Council.

Mr. Monroe stated that the question is not if the current ordinance is right or wrong or requires too much, but rather if there is a practical difficulty in this flat lot that is inherent to the site that prevents

compliance with the code as written. The Duncan test is the test to use. A majority of the test actually goes against the granting of the variance.

Mr. Monroe stated that despite what the applicant states, numbers are important. There is a substantial variance: the code requires 709, and they are asking for 55. This is the law, whether we like it or not. The code has a square footage requirement for 124,000 square feet of paved area, and the proposal is for 9,100; this is a huge variance. The job of Council is to consider the numbers and the large variance. The BZA did its job last night. He urged Council to keep in the mind that the Planning Commission voted against the site plan by a vote of 3-3 which is a denial. He also pointed out that in the mixed use district, 5 acres is required, and this project has 3.9 acres. They got a waiver on this point from the Planning Commission. It is permitted use—with a waiver. Those requirements would decrease the parking situation. Another acre would allow them to come closer to compliance; maybe it could not be met, but it would come closer.

Mr. Monroe asked Mr. Bartone to give his opinion if he is for or against the variance and the exception. Mr. Bartone said that he is 78 years and would be considered a senior. He has four vehicles. The problem is that all those on the commissions are lay people. He has been through this process two previous times with the city. He was not aware of the request for the variance on the lot size or he would have been at that meeting when it was considered. Suddenly people showed up and started clearing out the property next to him. He enjoys his privacy which he pays for. He considers himself a model citizen who doesn't create problems, but problems are being created for him. He feels the proposed building is just an apartment building where people who are seniors will be living; they won't even be cared for. He would rather see a couple of houses built on that property that would increase his property value; the senior housing project will devalue his property. He noted that none of the Council members would want to have an apartment building built next to their property.

Eva Frano of 30705 Lake Shore Blvd. lives next door to the proposed project. She stated that Mr. McCabe said they had reached out to the community, talked to the seniors and done a lot of research. They never once came to her house or sent them a letter or knocked on their door. They had no idea. She said that Mr. Bush of Shoregate Towers was at the previous evening's BZA meeting and stated that he was never notified either. Woda should have been sensitive to the neighbors next door. Variances for fences require notifying the neighbors; they should have done the same. In the meantime, they were working on changing the zoning of the property from 5 acres to 3.7 which is the same as what she has. They got variances for lot size, density, height requirement and now are requesting one for parking restrictions. She's not here to argue parking spaces. They have not been open about their dealings. She should have been notified. She feels it will be a detriment to their property. They thought the lot was unbuildable which is why they bought the property. They are now in their late years; no one would want to buy their property. She feels they have not been treated fairly.

Mr. Monroe cross-examined Mr. Smerigan about other senior housing requirements and codes. He confirmed with Mr. Smerigan that there are other variations of senior housing (such as skilled nursing homes) which require less parking than housing for people who are 55 and above. He also confirmed with Mr. Smerigan that there are 55 year olds who drive cars and couples who have two cars who are over the age of 55.

Mr. Monroe confirmed with Mr. Smerigan that there are other permitted zoning uses in the mixed use zoning district. He also inquired if in any of the other communities where he works if there is an exception vs. a variance. Mr. Smerigan stated that in some communities there are determinations where if a specific standard doesn't exist, the board or the planning commission has the authority to make a determination as to what the appropriate standard would be.

Mr. Monroe discussed the adjudication that the city's building inspector made that 709 parking spaces are required for this project and asked if Mr. Smerigan is disputing if it is correct. Mr. Smerigan noted the zoning code doesn't specify the number of parking spaces but rather the amount of area developed as a parking lot. Mr. Monroe asked if the building inspector did his job right. Mr. Smerigan said the code establishes the size of the paved parking area. The number of parking spaces can vary, depending on the layout. The inspector appears to have taken the minimum parking stall size and divided into the area, but it doesn't account for various factors such as handicapped parking spaces. He believes the number of spaces indicated are more than necessary. Mr. Monroe inquired how much less would be required, and Mr. Smerigan said it would probably be more like 400. Mr. Monroe asked how many are requested and how many are required, to which Mr. Smerigan stated 55 are requested and 400 required. Mr. Monroe asked if a variance from 55 to 400 or 709 is substantial. Mr. Smerigan stated it's not measured that way. The question is if the variance is the minimum amount necessary to mitigate the practical difficulty, not how many spaces difference there is between what is necessary and what is required. He confirmed with Mr. Monroe that he is not a traffic engineer. Mr. Monroe again confirmed with him that mixed use allows for other uses.

Mr. Monroe recognized Mr. McCabe who stated that he and Mr. Monroe have been corresponding since September 25, 2014. Mr. Monroe stated that under the new zoning code, instead of having to get a variance for the required acreage, a waiver can be obtained from the Planning Commission and does not require notification of the neighbors. The neighbors were not notified of the meeting; he and his clients would have been at the meeting if had they known about it.

Mr. Monroe confirmed with Mr. McCabe that no meals are prepared on site—the seniors make their own meals. He inquired if residents then need to go to the grocery stores or restaurants and would need a car. Mr. McCabe stated that Meals on Wheels is a viable option, so some may opt to do that. Mr. Monroe confirmed there are no nursing facilities on site, two employees, and no public functions or leasing of amenity spaces. Mr. Monroe referenced OHFA and asked if that is a low income housing tax credit deal. Mr. McCabe clarified that it is affordable housing tax credit deal which is low income tax credit by Section 42 of the IRS code which is a mechanism that provides equity. It addresses those who only have Social Security as their financial income. He clarified also that it is not an apartment building for those over 55 but specifically senior housing which brings with it amenities such as being visitable, computer lounge, library, etc.

Mr. Monroe noted that Mr. McCabe testified that the variance from 709 to 55 is minor. Mr. McCabe confirmed this and stated that it in fact would benefit the neighborhood and the neighbors by not having so many parking spaces.

Mr. Monroe then addressed the Duncan vs. Middlefield factors:

1. Will the property in question yield a reasonable return or can there be any beneficial use of the property without the variance?
There are other uses in the mixed district. It doesn't have to be senior housing.
2. Is the variance substantial?
A variance from 55 to 709 is substantial, whether we like the requirement or not. That's not the test.
3. Would the essential character of the neighborhood be substantially altered or would adjoining properties suffer substantial detriment as a result of the variance?
The neighbors believe their adjacent property will suffer substantial detriment.

4. Would the variance adversely affect the delivery of governmental services (e.g., water, sewer, garbage)?
More services would be required since it's a vacant lot, though that would be true no matter what is developed on the land.
5. Did the property owner purchase the property with knowledge of the zoning restrictions?
They knew about the restriction.
6. Would the property owner's predicament feasibly be obviated through some method other than a variance?
There's other projects in the area that have parking garages.
7. Would the spirit and intent behind the zoning requirement be observed?
He would suggest it is not. It's not whether the developer feels it's substantial. It's a huge variance that creates a dangerous precedence.

Mr. Slagter clarified with Mr. Monroe that he only provided argument and did not present evidence. He then asked Mr. Bartone and Ms. Frano about the trees that are a buffer from the apartments and clarified that they want the trees there because they hide Shoregate. He also clarified that they feel the removal of the trees and the view of Shoregate would negatively impact the value of their property.

Mr. Slagter asked Mr. McCabe about the testimony that his company had never knocked on the door of the neighbors. Mr. McCabe stated that he had knocked on their door in late August when he was at the property with the landscape architect reviewing the health of the trees on the property. He knocked several times that day and then reached out, indicating they had an interest speaking with the client. He also clarified that he had nothing to do with the rezoning of the property; it was done prior to the city coming forward and indicating that the site would only be allowed for senior housing; it is included in their purchase agreement. Mr. Slagter confirmed with Mr. McCabe that this project is considered senior housing in the industry and is consistent with what other developers in Ohio do for senior housing. Mr. Slagter also confirmed Section 1141.03(a) which is the multi use district provides for senior housing. He asked Mr. McCabe if he thinks Shoregate Towers would have an impact on whether the property would be used as a single family home. Mr. McCabe stated you typically wouldn't want to put a single family home next to such a large project (12 stories). The towers are able to be seen from many of the surrounding adjacent properties. When questioned about whether he took the photos of the other developments shown in Exhibit B, he stated that they don't have the equipment to take satellite pictures; they were obtained from Google and Bing which is their industry standard to look at the layout of parcels and lands, pre-construction and post-construction photos. He put these together for illustrative purposes. They accurately depict the condition of the properties. He has actually visited each site and is familiar with the parking at each.

Mr. Slagter then addressed Mr. Smerigan, asking if 55 compared to 709 is a big difference. Mr. Smerigan stated that if you want to determine if a variance is substantial and put context to it, the code doesn't specifically define what substantial is. The issue is, is what is requested the minimum necessary to mitigate the practical difficulty? There is a practical difficulty because of the excessive nature of the standard; then the issue is, what does it take to mitigate that practical difficulty, the minimum amount it takes to do that. What is the amount necessary to remove the practical difficulty? If you go beyond that point and ask for more than necessary, then it becomes a substantial variance. If what you are asking for is the minimum amount necessary to overcome the practical difficulty, then that variance is not substantial.

Mr. Slagter went on to confirm with Mr. Smerigan that there are other uses permitted in this district. But he has not indicated if there are other uses that would be economic viable. In response to Mr. Slagter, he confirmed that viability for a single family residence next to a 12-story building (Shoregate) goes substantially down. The proposed senior age facility is a step-down to a smaller building between a very large facility and a single family residence; this is the kind of transition you look for in a situation like this.

Mr. Slagter provided concluding remarks. He noted that though he can understand the concern of the neighbors who are long-time residents who bought property next to vacant property. That is not the standard in the law. The issues in terms of notice are a smoke screen. The city as the property owner has certain rights as does the applicant. There isn't a notice requirement on the variance. Woda complied with all the notice requirements. The reality is that the neighbors don't want anything built on the property. The issue before the Council is if there is a legitimate public health and safety reason why an exception should not be granted. Clearly there is no evidence. The evidence points to granting the variance and exception. This project is good for the city, and the parking will not create a negative impact.

For the record, Law Director Lucas noted that the Exhibits presented are the same as those presented to the Board of Zoning Appeals.

Mr. Patton asked the Law Director to explain what is before Council before the vote is taken. Mr. Lucas explained that two votes will be taken. The first is on the exception and thereby permit 55 parking spaces in lieu of the required 709 parking spaces. He explained what was meant by the exception and that it refers to 1163.03(b) second paragraph. The term "exception" is being used as a mechanism to delineate and distinguish it from a variance. The second vote will deal with a variance, and Council will be considering what has been presented by the Duncan vs. Middlefield factors. He explained that BZA denied both the exception and the variance applications by a vote of 2-3. To approve the request of the applicant, Council would have to reject the recommendation of the BZA as part of the motion.

Administrative Appeal Order No. 2015-1	An Order granting an exception to reduce requirements for parking from 709 to 55 spaces in the application of Section 1163.03(b) of the Codified Ordinances and Board of Zoning Appeals
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Motion by Mr. Vanni, seconded by Mr. Regovich granting an exception to reduce the requirements for parking from 709 to 55 spaces in the application of Section 1163.03(b) of the Codified Ordinances and the Board of Zoning Appeals, thereby rejecting the recommendation of the Board of Zoning Appeals.
Discussion: None.
Vote: All ayes. Motion carried.

Administrative Appeal Order No. 2015-2	An Order granting a variance to reduce requirements for parking from 709 to 55 spaces in the application of Section 1163.03(b) of the Codified Ordinances and Board of Zoning Appeals
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Motion by Mr. Wells, seconded by Mr. Vanni granting a variance to reduce the requirements for parking from 709 to 55 spaces in the application of Section 1163.03(b) of the Codified Ordinances and the Board of Zoning Appeals, thereby rejecting the recommendation of the Board of Zoning Appeals.
Discussion: None.
Vote: All ayes. Motion carried.

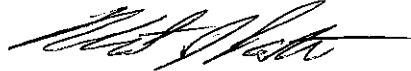
Adjournment

Motion by Mr. Regovich, seconded by Ms. Turk to adjourn.

Discussion: None.

Vote: All ayes. Motion carried.

The meeting was adjourned at 11:35 p.m.



PRESIDENT OF COUNCIL

ATTEST: Susan K. Wronka
CLERK OF COUNCIL