

PLANNING, ZONING & BUILDING COMMISSION

CITY HALL

September 8

14

The City of Cortland Planning, Zoning & Building Commission met on Monday, September 8, 2014 at 7:00 P. M. at the City Administration Building, 400 N. High Street, Cortland, Ohio. In attendance were the following board members: Chairman, Bill Sasse, Vice Chairman Charles Peck, Sally Lane, James Chubb, and John Picuri. Also present were Mayor Curt Moll, Law Director Patrick Wilson and the following individuals:

Ray Roddewig	222 Stahl Avenue	Cortland
Jerome Foskey	125 Topaz	Cortland
Judy Foskey	125 Topaz	Cortland
Scott Rowley	259 Whitetail	Cortland

Bill Sasse: It is 7:00, Monday, September 8, 2014. I'd like to call to order the regular meeting of Cortland Planning, Zoning & Building Commission. Can we have roll call please?

Roll Call: **Bill Sasse, here; Sally Lane, here; John Picuri, here; Charles Peck, here; Jim Chubb, here.**

Bill Sasse: Can I have a motion for approval of commission minutes for August 11, 2014 meeting?

Charles Peck made a motion to approve August 11, 2014 meeting minutes, seconded by **Sally Lane.**

Roll Call: **Jim Chubb, abstain; Sally Lane, yes; Bill Sasse, yes; John Picuri, yes; Charles Peck, yes. MOTION APPROVED.**

Bill Sasse: Being that there is no Old Business, we will go directly to New Business. This isn't anything that needs a vote on, is it?

Patrick Wilson: You are going to eventually need to make a decision on the appeal, yes. You don't have to call for a motion. Read into the record the description of what the issue is and then we will have a discussion on it.

Bill Sasse: Under new business 16-14 Appeal of Service Director's interpretation that the buffer requirement as stated in Ordinance 1125.16(a) is inapplicable at 680 Delbert in the absence of a zoning permit. Is there anyone here to speak for this? Can you step to the podium please?

Jerome Foskey: I am Jerome Foskey. I live at 125 Topaz along with my wife Judy. I am here representing ourselves and our neighbors on either side of the property. My wife and her parents who live next door have occupied the property since about 1986 and were one of the first tenants in the subdivision. During that period of time they have enjoyed relative peace and quiet, have enjoyed a forested backyard that shielded itself from the Delbert property. Starting in about 2009, Mr. Westbay began to remove trees. We respect his right to use his property and he removed a certain number of trees. The stated purpose as we understood was he was selling the property and he needed more parking space. In 2009 in May we created a six foot stockade of fence across the back of our property at 125 and 127 Topaz to further shield our property from the Delbert street property. Subsequent to that in about 2010, Mr. Westbay began removing the remainder of the trees. At the time he removed the remainder of the trees, he told my father-in-law he was going to plant pine trees across the back of the property. We waited for that to happen. In 2012, we sent a certified letter to Mr. Westbay that was acknowledged with a signature and got no response. In 2014 we sent another registered letter to Mr. Westbay, certified. He called my wife, told her he had to go and he would call us back. So in 2014 we sent a letter to City Council. City Council said this was a matter for Planning Commission, you should go through the Planning Commission. We went to Mr. Wittman and asked him to look into it. His subsequent response was that the city had no authority

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to enforce the buffer requirement and he sent a letter to Mr. Westbay. In the letter that we received from Mr. Wittman he did not specify that the property had been zoned industrial prior to the adoption of the 2005 ordinances by the City of Cortland. Reading the current ordinances there is a requirement for a buffer between industrial properties and residential properties. Also, reading the current ordinance, the intent in adopting the new ordinance is that property owners who were grandfathered under the old plan, the old industrial classification, would continue to maintain the relationship in terms of not impinging upon their neighbors, in terms of noise, unsightliness and other such things. Essentially, for the last 3 or 4 years we are able to look out our back door and have a very unappetizing view of trailers, a grader separator, a building, piles of gravel and rock, and other overgrown materials. The noise from 305 has increased, the dirt and noise when the property and the grader separator is being used is unacceptable. We feel that the value of our property has been reduced by Mr. Westbay's actions. So we have appealed to the zoning board to reconsider Mr. Wittman's opinion. In light of good neighbors we have not come to you before you until now. We have sought to be good neighbors and work it out with Mr. Westbay but we have not seen until last Friday any efforts on his part to remedy the situation. Since last Friday he has begun planting some trees. We don't know any details – when he plans to complete, how much he intends to plant, how far the trees will go in either direction. And lastly, what will be done regarding the noise and the dust coming from Delbert that did not previously exist there.

Mr. Sasse: Patrick, do you have something to say on behalf of the city?

Patrick Wilson: All I'm here to do is to make sure that Mr. Foskey's appeal gets heard properly which we have begun that process tonight. What should take place is if there is anyone else here to speak in favor of the Foskey's appeal they should be given their opportunity to do that including his wife if she so chooses and anyone else in the audience who would like to speak on behalf of the appeal. You get to ask them questions. If there is anyone here to speak on this issue but may not be in favor of what the Foskeys' are asking for, they get their opportunity to speak as well. So now is your opportunity to ask questions of Mr. Foskey unless he has anything else to add.

Bill Sasse: Does anyone here have any questions to ask of this gentleman?

Bill Sasse: Were you the one that put the fence in?

Jerome Foskey: Yes, in May of 2009.

Mayor Moll: And was that after all of the trees had been cut down?

Jerome Foskey: The majority of the trees had been removed. Up until that time we didn't need a fence. I had provided in my letter to City Council pictures of the property prior to the tree removal – I am not sure if you have them. What we had prior to the fence, and after the fence and now after the further removal of the trees.

Bill Sasse: I went out there Saturday. You weren't home.

Jerome Foskey: Thank you for stopping by. I appreciate it.

Bill Sasse: I empathize with you, I honestly do. One of the things though that has always come up in every meeting I have gone to, or every conference I've gone to is – and I'm not trying to be snide or anything. But they've always said - If you like your view, you should own it. As far as the dust I see that he is sifting highway gradings it looks like. I haven't seen any dust or anything come from there, the noise. I would like to see what that does, how much noise that creates, how much dust that creates. Then at that point we could control that or see what we would have to do about that. We have been through this before with other businesses. Until we find out how much or what the

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problem is there is nothing we can really do about that. As far as the buffer zone and all that, he was granted this property before these regulations were put in as far as this buffer zone. I don't know where to go other than what I've just said and I do empathize with you. You have a beautiful backyard.

Jerome Foskey: We take great pride in our property and we do our best to keep it up.

Bill Sasse: I can see that. That grill you have back there, I can picture just sitting there grilling some decent steaks on it and having to look at what you have to look at. I feel bad. But I don't see how there is anything this board can possibly do except talking to the gentleman that owns the property and maybe trying to see if he would be willing to do something. There is nothing we can force him to do though.

Jerome Foskey: Under the regulations as I read them, what was the use of the property in 2005 when the regulations were enacted? In 2005, whatever the use of the property was, grading was not part of it. Running a grader separator was not part of the property in 2005. So that could be construed as a change of the use of the property which requires your approval as a voting board.

Bill Sasse: It is zoned industrial. The uses of the property are pretty vast as far as what he can do with it.

Patrick Wilson: The other thing and let me add in. We don't, as best as I understand it, Don doesn't have any evidence that there has been a change in use in that property. I have no reason to disbelieve you, but this board has to make a decision based on what evidence its given.

Jerome Foskey: I understand.

Patrick Wilson: If you have something to show the city that there has been a change in use I think that would further support your opinion in your appeal.

Jerome Foskey: Alright.

Bill Sasse: I am sure you have taken a look at what uses are permitted in Industrial.

Jerome Foskey: But are all uses permitted if you have an industrial zoning, any uses permitted on that list?

Bill Sasse: Pretty much.

Jerome Foskey: So if you get an industrial zoning for one purpose and you change the purpose then the industrial zoning still remains even though there has been a change of use of the property.

Bill Sasse: It is still zoned industrial.

Jerome Foskey: But according to my reading – it says the zoning board has to approve a change in use of the property.

Mayor Moll: Only if it is a use that needs to be reviewed.

Bill Sasse: Right. If he was going to go with something like hazardous materials or something along like that. Anything that is not permitted as a use he would have to come to the board. To screen asphalt – we would have no problem with that at all.

Jerome Foskey: Even if it was in your backyard, Mr. Sasse?

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Bill Sasse: I would hate it. I've got to be honest with you, I would hate it in my backyard. Like I said I have all respect for your problem – I would not want that problem. Don't get me wrong, I understand 100% where you are coming from and I have complete empathy for you but there is nothing at this point that we can really do about it.

Jerome Foskey: Thank you for your time.

Mayor Moll: The resolution that you are seeking is a berm and trees-

Jerome Foskey: Not necessarily a berm. Right now we are looking for anything that will block.

Mayor Moll: So he has planted some trees?

Jerome Foskey: He has planted 12 trees since Friday. He planted 4 Friday, 4 Saturday, and I believe 4 today. He has essentially dug a ditch and set them in there, he hasn't completed planting. He is in the process.

Bill Sasse: When I looked at your backyard, I tried to figure out after I looked at everything else, what would I do? White pines is the first thing that popped into my mind.

Jerome Foskey: We are faced with waiting to grow a barrier that may or may not resolve it. The grader will still continue to stick above the tree line for quite some time. At two feet a year, we are two to three years away from a resolution. Any other questions?

John Picuri: You mentioned that the intended purpose for removing the barrier was to expand the parking lot. Did they do that?

Jerome Foskey: What he ended up doing was burying concrete chunks and other things back there. The parking lot, it is difficult to say if it was expanded because the parking lot is not paved, per se. It is crush and run, whatever you want to call it, rock dust is what I grew up calling it. I think ya'll call it something else. You call it slag up here. It would be difficult to show that it had been significantly expanded.

Bill Sasse: What I would like you to do is this summer or whenever he starts running that machine, if it is creating dust and everything and I'm not doubting you that it does. Those things will do that. And if it is very loud, I would like you to give me a call. I would be more than happy to come over and look at it and hear it. At that point, maybe we could have that enclosed. We have done that with buildings before. But other than that, I'm sorry.

Charles Peck: Patrick, can I ask a question?

Patrick Wilson: Yes. Right now the Chairman is giving Mr. Foskey his own personal opinion. He is not speaking on behalf of the board. The board hasn't spoken as an entirety. Yes, Charlie?

Charles Peck: Bear with me. I am doing this to try and get this straight in my mind. When we passed a resolution that changes zoning requirements, those people that are already there, in existence, are grandfathered in do not necessarily have to comply with the changes in requirements.

Patrick Wilson: That is correct.

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Charles Peck: When we passed the zoning requirements that added a buffer zone in there this property was already in compliance.

Patrick Wilson: Correct.

Charles Peck: Now subsequent to that the owner took it upon himself to remove that barrier which put him out of compliance then with our current criteria.

Patrick Wilson: When you said out of compliance they are not applicable to him because he was grandfathered in.

Charles Peck: But he was grandfathered in with the property he had, with trees and a buffer zone.

Patrick Wilson: He was grandfathered in as the owner of that property with its use whatever its use was for. The ownership hasn't changed. Based on what I understand Don's interpretation is – the ownership hasn't changed and the use hasn't changed. If there were some evidence of the use changing and that is not an easy thing to prove in some situations I think you might have to take another look at it. But what I am suggesting is you would need more evidence than our conjecture about the use of that property.

Bill Sasse: Does anyone else have anything else to ask this gentleman?

Jim Chubb: There is nothing wrong with your fence right?

Jerome Foskey: Yes we had that permitted. We came down and got a permit.

Jim Chubb: So that really is giving you something to keep them (inaudible).

Jerome Foskey: It is below the elevation of our deck so it is equivalent of having (inaudible – multiple speakers). The city only permits a 6 foot high fence.

Bill Sasse: Would anyone else like to speak?

Mayor Moll: I want to point out. In your packet is a letter that was written on May 27th from Mr. Wittman to Mr. Westbay. In the letter he is requesting him to do essentially what you have asked him to do. Either put a fence in, get the equipment out of there, and he suggested he put some trees in. Now he is working on the suggestion to put trees in. So it is not that Don has not taken any action in this direction. The problem is that Don feels he has no authority to enforce that.

Terri Barnovsky: Mr. Westbay did call today. He wasn't sure if he was going to be able to attend. He did state that he had planted approximately ten trees. His intent is to continue planting trees. He was waiting for cooler weather – he said both because it was better timing for planting the trees as well as for his work schedule. But he is planning on continuing to plant trees.

Bill Sasse: All along the back along the property?

Terri Barnovsky: I can't answer that for him.

Mayor Moll: He didn't say anything about whether he plans to continue the operation he has there?

Terri Barnovsky: I did not discuss that with him.

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Mayor Moll: Alright – well the record so says.

Bill Sasse: Is there anyone else here who would like to speak? Thank you very much.

Jerome Foskey: Thank you for your time.

Patrick Wilson: So the board has to – Don has made his recommendation known to you. If the board wants to reverse what Don has done or his interpretation of the zoning law as he outlined it to you then you would honor Mr. Foskey's appeal. If you don't believe there is any evidence to support Mr. Foskey's appeal you would vote to deny it – make an oral motion with a second and a roll call vote.

Bill Sasse: Do I hear a motion to approve -

Patrick Wilson: To accept his appeal or to deny it his appeal – let's make it that way.

Bill Sasse: Do I hear a motion to deny his appeal? No action.

Mayor Moll: We will not make a decision tonight.

Patrick Wilson: Then no motion made and no action taken on it the appeal remains in front of you. It remains on your agenda to take care of, so it will be brought up at the next meeting.

Bill Sasse: Should I make the request one more time?

Patrick Wilson: I would after explaining that.

Bill Sasse: Any motions to accept the appeal to the Service Director? (Pause) Do I hear a motion to deny the appeal to the Service Director? (Pause)

Mayor Moll: We need more time.

Patrick Wilson: It will be on the agenda for our October meeting.

Mayor Moll: That will give you an opportunity to discuss it. Thank you, appreciate you coming in.

Bill Sasse: Sir, you have something you would like to say?

Ray Roddewig: Ray Roddewig, 222 Stahl, Apartment 207. I have been complaining in writing about a house across from the Chicken Coop for roughly 5 years. And two or three years ago I went to City Council not knowing where to go and I believe you were there Mr. Moll. Dee Dee Petrosky says make a formal complaint and send it to the Zoning Commission. I hand delivered a letter up here written at that time to Scott Daffron. He was head of zoning back then, was he not? Well guess what. This guy is on a plan of a gallon of paint a year.

Bill Sasse: I don't mean to laugh.

Ray Roddewig: That is okay. I laugh when I talk about it. He ain't getting it. I also know there was a discussion that went on and Curt was part of it that we had these funds from the federal to help people if they needed help fixing up their house. I think that is how the old feed mill got knocked down.

Mayor Moll: No.

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Ray Roddewig: But anyhow we might be able to get the paint and get it painted for him. Now I am two or three years later – I don't know how well you guys keep records and the place still isn't painted. What kind of a time limit do we have on painting a place?

Mayor Moll: There was action taken three years ago when you wrote the letter. Terri, well you weren't even here then.

Terri Barnovsky: I did pull it today. Your complaint came in, in March of 2012. It had to do with the demolition of the building and painting the building. He did not take action, he was given an abatement requirement for these items after inspection. He did not do it in the time frame that was given and Don did file charges with Central District Court. This was all in 2012. He did then demolish the building and started making progress on the painting. At that time, we did close the complaint. That matter has been closed because he did demolish the building and it was determined that the painting was making progress and was no longer in violation of the more than 25% I believe.

Mayor Moll: At this point, there are two visible patches – I did not drive around the house. There are two visible patches on the house that are not painted.

Ray Roddewig: You are incorrect.

Mayor Moll: I looked at it today. There are two patches on the south side of the house.

Ray Roddewig: Do you ever go to calling hours at Shafer-Winans?

Mayor Moll: I did not go to the back of the building. It is not visible from the street.

Ray Roddewig: It should be visible from all directions.

Mayor Moll: The property maintenance code is for the appearance of homes in the community it is not from the creek or from the back of the parking lot. But at any rate, I am going to say about 200 sq. ft. of exterior of the house that isn't painted yet as you can see from the road and at that point it is much less than the 25% requirement and there is no violation.

Ray Roddewig: He is correct that there's two places on the south side of the house that aren't painted. Scaffolding is still up and it is all painted on the north side of the house and the back side – at least half of it doesn't have.

Bill Sasse: At this point, Terri, could you send him a letter asking him what his plans are and see if he will get in touch with us and let us know what his plans are about the property and that is what we will do for now.

Terri Barnovsky: You are welcome to submit another complaint.

Ray Roddewig: Why wasn't I informed that it was dropped?

Terri Barnovsky: It wasn't dropped, it was considered closed. I honestly don't know – I had only been here a few months and if I had a requirement to let you know, I may not have realized that.

Mayor Moll: There's no requirement.

Bill Sasse: We will send the gentleman a letter what his plans are for the property and that we do have a complaint. Other than that there is nothing else we can do. We will see what happens at that point. I appreciate you coming in and bringing this to our attention.

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It is something that we didn't know was stagnant again and because of the citizens of this community that we are able to find out about a lot of these things.

Ray Roddewig: I have two more much simpler items.

Bill Sasse: I hope so.

Patrick Wilson: Hang on. You have completed your agenda. If you want to hear what he has to say, that is up to you at your discretion but this isn't like Council where they open it up to comments. There is a format to follow and that is to contact Don Wittman's office and submit your complaint or question.

Bill Sasse: If you can make it very quick.

Ray Roddewig: I will make it very quick. I live in Stahl Avenue apartments. The play area for the kids on the north side keeps getting smaller because these trees are dropping saplings and continue to grow this way. So I was after the landlord, why don't you mow to the line? He said he would have to get a surveyor in. What do you mean you have to get a surveyor in? Do you guys have any plat maps that show the back of these lots?

Bill Sasse: Yes we do.

Ray Roddewig: It is lots off of Stahl Avenue.

Mayor Moll: That is a matter between you and the landlord or whoever.

Bill Sasse: That is a landlord issue.

Ray Roddewig: The other one was vehicles without current plates. The landlord tells me she has to pay a 100 bucks to get it towed away. Now it isn't her vehicle, it isn't any of the three owners' vehicles. It is a tenant's vehicle.

Bill Sasse: Again, that is a landlord issue.

Curt Moll: You can bring that to City Hall. It is not an issue for this board.

Ray Roddewig: Mrs. Barnovsky, you will be getting something probably tomorrow.

Bill Sasse: Thank you very much. Can I have a motion to adjourn?

John Picuri made a motion to adjourned, seconded by **Sally Lane**.

Roll Call: John Picuri, yes; Charles Peck, yes; Sally Lane, yes; Jim Chubb, yes; Bill Sasse, yes. MOTION PASSED.

Meeting Adjourned: 7:26pm.

William Sasse, Chairman

Date

Teresa Barnovsky, Secretary