

**Minutes of the Planning Commission
Sheffield Lake, Ohio
December 17, 2009**

The regular meeting of the Planning Commission was held Thursday, December 17, 2009. Chairman Jancura called the meeting to order at 7:03 PM.

ROLL CALL OF MEMBERS:

Present: Jancura, Belaska, Bracale

Absent: Huska, McClelland, Building Inspector Wiblin (excused)

Attending: Law Director Graves, Councilman Elliott

MINUTES: *Motion by Belaska/Second by Bracale to accept the November 24, 2009 joint meeting minutes as presented. Yeas All.

CORRESPONDENCE: **None.**

REPORT FROM COUNCIL REPRESENTATIVE: **None.**

REPORT FROM ZONING BOARD OF APPEALS MEMBER: **None.**

PRESENTATIONS: *James Kolleda – build a joint accessory building which would span lot line unless new parcel is created – TABLED.* Law Director Graves advised I received a phone call from Mr. Kolleda's attorney and Mr. Kolleda's attorney basically wanted to know what the city was looking for and I haven't responded to that yet. I plan to call him tomorrow and my answer is what we are looking for is that it becomes compliant with our code. There is so many issues with that structure as it currently stands; it hadn't had the proper electrical inspections, plumbing inspections or anything like that. The Building Inspector has been going out there and they have been pushing that issue. I believe in a fury he kind of ripped a bunch of it out, I don't know if that was necessary or not but I think that is what happened to my understanding – like the wall where the pipes were in. I think he is getting frustrated but you know he just built that thing with no permission, with no regard to the code. If that is absorbed into another parcel; 1 of the 2 parcels or if a new parcel is created that is acceptable to everyone then that would alleviate the issue of it spanning the property line but in my opinion it is still going to need a variance because even then it is too large for an accessory structure. It exceeds the allowable square footage so even if the Planning Commission allows the lot split to go forward, he is still going to have to go back to the Zoning Board ultimately for another variance and I don't know whether the Zoning Board is going to give to him or not. Chairman Jancura asked this sounds weird but could he call what we are calling it "the accessory building", if he calls it "the main building". Law Director Graves answered no because it is either going to be absorbed onto another line where there is a main building or it is going to be on a smaller lot which is too small for a buildable lot anyway. No, it is an ancillary

accessory building that exceeds the allowable footage. That issue is on going, I don't know what is going to become of it. Mrs. Belaska asked Mr. Graves is there anyway like you say if they put it onto 1 lot, who would own this lot? It is kind of a big dilemma here. Law Director Graves explained you have got 2 neighboring parcels 1 owned by Mr. Kolleda and 1 owned by Mr. Smith and the accessory building sits across that lot line – it spans the line. They have misrepresented that situation from the moment they started that construction. There is a whole other issue because the city technically owns lakefront there that goes back to the old grant of the property from the West Shore Club to the city when they built the Community Center and they reserved this for the city. The strip of beach along there but each individual resident has exclusive use of it, there is a whole other issue. But in measuring that portion is probably way out in the water by now through the erosion. That was a first issue that we had to look at as to whether or not that is even on city property but anyway so now it spans that property line so either they are going to do a lot split where one or the other is reconfigured to include the accessory building so that it sits on one or the other property and doesn't span the line. The other alternative would be for them to create a brand new third small parcel that just encompasses the accessory building so there would be a separate parcel there and it would be a non-buildable parcel but it would be allowable as an accessory to the main and we have already conferred with the county and they will allow it. But in going back, the new ordinance on the books is Planning Commission can't approve a lot split that creates an un-buildable lot and that would create an un-buildable lot if they did it that way. But would require another variance so it is like a big circle. Zoning Board can allow that type of a lot split and you could grant that lot split but then it would have to go back to Zoning Board. It just seems like so many hoops to jump through, if they would have just built a smaller building on one of the lots then it would have been fine but the problem with Mr. Kolleda is that he does what he wants to do and then tries to get permission after the fact. Mrs. Belaska asked do you see an end of the tunnel, how would you this getting resolved? Law Director Graves answered at this point, he has either got an awful lot of work to do in terms of getting that in compliance and there is no guarantees that Zoning Board is going to find the necessary hardship that would necessitate the variance. Chairman Jancura stated a hardship that you don't create yourself. Law Director Graves concurred in order to get a variance you got to show practical difficulties and hardship prior to construction. You got to say because of these factors I need relief from the existing zoning code and the Board could give that to you. You can't just build it out of compliance and then come in and say well my hardship is if you don't give it to me I am going to have to tear it down. That is kind of putting the cart after the horse. There is no guarantees on that so he has a lot of hoops to jump through and a lot of things have to fall into place, otherwise it is just going to have to be demolished and reconstructed in compliance.

OLD BUSINESS:

City zoning study – Law Director Graves advised on-going.

NEW BUSINESS: *Wind Turbines – legislation and recommendations.*

Law Director Graves advised where we are in this whole process is we have signed the letter of intent to start the ball rolling with Nex Gen for the construction of a 100K wind turbine in the shopping center area. That it would be built at no costs, the city has to put a little money as earnest money down payment in advance on the power that we would buy, it is like a good faith down payment. We would be credited with that on the power. We would buy the power to reduce costs and then we are going to turn around and sell that Apples Grocery Store so really it is a net wash to the city but we do get a little of a reduction in power purchase and do our part for the alternative energy movement and the environment and hopefully open the door for some economic redevelopment dollars that are targeted toward green projects. So we have done that but before that gets constructed we need legislation governing wind turbines generally in the city and that type of rezoning has to go through the 60-day review by Planning and then back to Council. The way the legislation is drafted is it authorizes with these parameters a wind energy facility to be granted by the Zoning Board of Appeals as a conditional use permit. So anybody that would want to put a wind turbine would go to the Zoning Board of Appeals and they could grant a conditional use permit for the property so long as they complied with all of the parameters of the legislation that we are working on. I like the idea of having it issued by Zoning Board of Appeals because it necessitates a public hearing, any time a wind turbine is proposed by anybody in the city there is going to be public hearing with notice to all the adjoining, adjacent and abutting property owners and you can hear all of the pro's and con's of the project and before they would grant the conditional use and that would have to be within the parameters of the legislation. So this is a draft piece of legislation that we are looking at and it is largely based on the City of Lakewood's. Lakewood is kind of like Sheffield Lake in that it is very dense, there is not a lot of vacant space for wind turbines. So their ordinance is pretty restrictive, there is a lot of restrictions on wind turbines. Other communities that have a lot more open space have a lot more flexible legislation and I can even tell you that the City of Cleveland their legislation is much less restrictive than this. As an example; the wind turbine by the Rock Hall of Fame & Science Center. It is right there right by the facility and also one was just put up on Pearl, right in the center of a junkyard. You know you have the junk cars and a front door and there is this 100K wind turbine like right there within probably 30-feet of the front door of the building with people walking right underneath it. My thinking on it was let's put a draft piece of legislation before Planning Commission that is somewhat restrictive and I watered it down a little bit but it still has a lot of the restrictions on it for review and comment and consideration thinking that if there were portions of it that we found to be too restrictive that they could be riddled away a little or loosened rather than having to add things which we could still add things as well I suppose. Letters were sent out, the statutory required

department heads to review – the Police Chief, the Fire Chief and our Building Inspector since he is out on Workers Comp we asked our Chief Building Official who does commercial inspections to comment on it. Those 3 had really no additional comments they thought the legislation was fine. The city engineer which we used K&S Mark Skellenger he offered some brief comments. Then our Service Director with the assistance of our Grant Administrator Mr. Gardner they took a long time and that is what you see here with the original with highlights and the revised – that is I guess the Service Director’s recommendations. The other thing to keep in mind is we are in a little bit of a different perspective on this then most communities, most communities right now are addressing wind turbines from the standpoint of private individuals or corporations that want to build wind turbines and the city trying to keep those regulated/keep a handle on those. From our perspective it is the city itself that wants to build them so we don’t want to rope ourselves in too tightly if you will or box ourselves in. These are regulations that we are actually putting on ourselves because we are the ones that are looking build the turbines.

KS Mark Skellenger – comments;

**we recommend that the ordinance require the site plan and foundation plans to sealed by engineers licensed to practice in the State of Ohio.*

Discussion – Law Director Graves advised I think that is a good idea.

**section 1121.07 is problematic, It says that wind turbines are to be constructed away from occupies buildings. It is silent on the construction of a building in proximity to an existing wind turbine. If the PC does not want wind turbines to be able to fall on all occupied buildings, you could require the applicant to provide a no-build easement within the drop area. We often see this issue arise on gas wells. Gas wells cannot be constructed near a house, but nothing prevents a house from being constructed near a gas well.*

Discussion – Law Director Graves advised it is basically making it consistent. It basically says the legislation as currently written says a wind turbine shall not be built within a certain distance from occupied structures but it doesn’t say inverse – that no occupied structure would be built within a certain proximity to the turbine. He says that he sees this all the time on gas well legislation where it says that gas wells cannot be constructed near a house but nothing prevents a house from being constructed by the gas well. So he is just saying make it reciprocal.

**I have not reviewed the ordinance in relation to Chapter 531.04, but will do so upon request and authorization.*

Discussion – Law Director Graves advised that is the noise ordinance. That is the criminal code section regarding unreasonable noise and has a decibel levels, that is something we will take into consideration at the contract. I don’t think that is really going to be an issue. He advised section 1121.09 does say audible sound from wind energy facility shall not exceed the limits set forth in 531.04 of our codified ordinance. So in other words, it won’t exceed the maximum allowable decibels. I think when the engineer wrote that on there he hasn’t looked at the exact proposal by Nex Gen to see

if this turbine will be in compliance. But that is something that is not really concern, we will make sure that that gets enforced that any wind energy facility can't exceed our noise ordinance obviously. So that is a non-issue.

**conditional use permits gives the Planning Commission broad discretion with respect to their approvals. Many communities conduct public hearings and invite landowners of record (within a prescribed distance of the facility) to attend and comment on such proposals.*

Discussion – Law Director Graves advised this conditional use permit will be held before the Board of Zoning and Appeals, not the Planning Commission. It says conduct public hearing – it would be a public hearing with notice to all the adjacent land owners. So that concern is already dealt with.

**liability insurance limits seem light to me. Has this requirement been reviewed by your insurance carrier? n this particular case would it be possible to get the applicant to indemnify the city from all damages caused by their negligence? Insofar as the facility will constructed on city-owned property, I would encourage a candid discussion of the risks and consequent costs of damages caused by negligence. The costs to defend such claims could be relatively large and, even though their likelihood is remote, they should be discussed.*

Discussion – Law Director Graves advised the last one was the insurance issue again not really an engineering issue, more of a legality. We have conferred with our insurance agent which is Custis Insurance, they took a look at this and based on the proposal by Nex Gen we would have no increase in the city's insurance premiums for this project. With the city being listed as an additional insured on Nex Gen's insurance policy. We will make sure that there is adequate insurance coverage through Nex Gen and through our own policy should anything happen. Chairman Jancura stated on his second question in the insurance one, in this particular case would it be possible to get the applicant to indemnify the city from all damages caused by their negligence? You are just looking to cover with insurance or an indemnity? Law Director Graves answered remember we still have to work out all of the terms and conditions of the contract with Nex Gen. What we have right now is just a non-binding letter of intent and we still have to pass the legislation and then when we get ready for construction there is going to be what I anticipate being a rather lengthy contract between the city and Nex Gen which indemnification on the part of Nex Gen for any acts or omissions or negligence on their part would definitely be part of that contract. The ordinance itself requires anybody constructing a wind turbine to maintain a million dollar policy. So I would recommend that we consider incorporating the first 2 recommendations by the city engineer. Chairman Jancura asked if anyone on Commission had any objections to that - no voices of objection were heard. Law Director Graves advised we will get that worked into that for the next meeting.

Chairman Jancura advised I see some of the comments by the Safety/Service Director, he is looking to basically take out a residence as an occupied building – in the

definitions; 1121.02. Law Director Graves advised I have to be honest with you, I don't know what he is suggesting there. The revised copy still has that in it so I don't know what he is suggesting. Chairman Jancura advised watch yourself for an inconsistency if you adopt that definition of an occupied building and you are talking about the fall zone being a reciprocal - you will have a conflict with the wording that is there because you will call that one an occupied building but it is the occupied or in use when the permit application is submitted. So you could fall yourself into a trap where you would make it ambiguous, does that make sense to you? Law Director Graves answered yes I think that if you look at the revised one under E I think that what he intended was to delete residents. Chairman Jancura concurred I think that is what he intended to do as well. Also to delete that occupied through the end. Law Director Graves concurred it would just say mean school, hospital, church, public library or other building used for public gathering. Chairman Jancura advised I think resident should stay, personally. Mr. Bracale asked why would you take it out? Chairman Jancura stated if a resident has got enough land and such that they can put one up and meet all the other requirements then why not? The one question that I have is that this is not written by any sort de minimus exception like a wind turbine this big would require a million dollar insurance. If somebody came up with an ultra efficient turbine. Law Director Graves advised these are some of the comments that I was hoping to get because I think that in some cases this is too restrictive and also there is technology, there are wind turbines that are more of a vertical, helix type thing that people on the roofs of their homes under a strict reading of this ordinance that wouldn't be permissible or would require a lot of hoops to jump through. Mr. Bracale stated why would we want to limit ourselves, that doesn't make sense. Mrs. Belaska stated we are getting more high tech everyday, they will come up with something a lot smaller and a lot more efficient. Chairman Jancura advised I don't know how you solve that one except for maybe a regulation as to total height. If you have a total height more than this then is when that serious stuff comes in. Law Director Graves stated I think that might be where they were going with the elimination of residents because if you went with a 1 to 1 fall zone ratio there would be very few properties in the city that could put even a moderate wind turbine up. I mean even a 45-foot wind turbine, you are talking about putting it somewhere in your yard where it is 45-feet from your house or your neighbors house. That might be very difficult unless you have a pretty big yard and there is not a lot of those kind of properties in Sheffield Lake - there is a few but not a lot. Councilman Elliott stated in fact most neighborhoods are going to fall within that problem. Chairman Jancura advised but you never know, I have seen the ultra efficient cylindrical ones that are mounted on top of somebody's house. Yes they are not up grabbing the big wind but they spin and they will spin in any direction that the wind blows. Law Director Graves advised let's just use the ones by the boat launch as an example, I am sure that we all seen those. Those are 45-foot turbines, I know they look taller than that but they are 45-foot and those are 2.4K turbines. So they are not putting out a lot of power, only 2.4 kilowatts. So if someone wanted to put one of

those in their backyard on a 1 to 1 fall zone you would need 45 and not just from your house but from your neighbors and all sides and back. Chairman Jancura stated I completely agree, we need that big thing to make 2.4 kilowatts. But you look at miniaturization/micronization and so forth. Those things are coming so fast especially if we are determined to do it – you could have some ultra efficient thing. I just would hate to see this be so restricted that it is obsolete in 10 years. Mr. Bracale added or less for that matter. Mrs. Belaska added they took big boom boxes down to small little things. Councilman Elliott advised if you look at the industry all together, 5 years ago there wasn't many wind turbines out there. In that short time span, we already have 2 and going 3 here. The industry is going to go into the private home sector. Mrs. Belaska concurred especially with everybody going green, this is just a beginning of a kick-off. Mr. Bracale stated look at how far they have come with solar panels. I have 2 huge ones in my house and I would bet the new versions are a quarter of the size and put out a lot then what I have got. You can have where your whole roof is solar panel and doesn't look like anymore. There was a brief discussion on green options and savings. Law Director Graves advised just as a general guideline then in revising this for the next meeting, we will work to make the ordinance a lot less restrictive when it comes to residents and perhaps mounting on roofs. Basically what you are talking about is fall radius/zone and whether or not that is a legitimate concerns. There was a brief discussion on safety concerns. Councilman Elliott advised I question the fall radius because we don't require fall zones on cell phone towers or radio towers or anything like that. With any huge tower like that, they could fall in any direction and take out a building. Mr. Bracale asked do they know of any history of these things snapping or spinning off? Councilman Elliott advised in speaking with Nex Gen, he advised me to go to You Tube and I guess there has been cases of where these things have stopped working properly. Mr. Bracale stated I am not a wind guy but it doesn't seem like it would happen very often. I understand it is a remote chance, I understand we have to cover all the bases anyway but I am just curious to see how often does something like that really happen. Mrs. Belaska advised there could be a malfunction on anything, anything is possible. Councilman Elliott advised I think we need to give David a lot of credit here because he is thinking ahead of the game. Commission concurred. There was a brief discussion on other forms of energy savers and safety concerns and dangers such as in the township of Perkins.

CITIZENS' COMMENTARY: None.

MEETING ADJOURNED: With no further business before this committee, *Motion Belaska/Second by Bracale to adjourn at 8:17 PM. Yeas All.

CLERK OF COMMITTEE AFFIRMATION: This meeting of the City Committee of the City of Sheffield Lake, Ohio was held and conducted under All Rules and

Regulations Governing the Sunshine Laws of the State of Ohio as they may apply. All meetings are recorded and available in Councils Office.

CLERK OF COUNCIL/COMMITTEES

Kay Fantauzzi

I, Kay Fantauzzi, duly appointed Clerk of Commission
Of Sheffield Lake DO HEREBY CERTIFY that this is
A true and exact copy of the Minutes of COMMISSION
Of December 17, 2009.

CHAIRMAN

Scott Jancura

PRESIDENT OF COUNCIL

Edward R Podmanik