

Cuyahoga Falls City Council
Minutes of the Planning & Zoning Committee Meeting
May 7, 2007

Members: Kathy Hummel, Chair
Tim Gorbach
Ken Barnhart

Mrs. Hummel called the meeting to order at 6:30 p.m. All members were present.

The minutes of the April 16, 2007 committee meeting were approved as submitted.

Legislation Considered

Temp. Ord. B11

Discussion:

Temp. Ord. B-11

An ordinance accepting the Planning Commission recommendations, findings and conditions for the Heritage Ridge Regulatory/Development Green Overlay Plan and declaring an emergency.

Mr. Guerra addressed some of the concerns mentioned at the previous committee meeting. First, he addressed the issues with regard to the bonus table and explained how it was derived. He also indicated that the staff report in January shows 110 units which was a reduction from the 125 previously proposed. With regard to the four points mentioned in the letter from Kirby Date, the proposed subdivision met three of the four standards. The fourth was in regard to her concern about the density. He pointed out that at the time of her letter, the density was 140 units. It has since been reduced to 110.

Mrs. Hummel opened the discussion to the public but requested that only individuals with new information come forward. She stated Council knows how they all feel whether they are present on behalf of the developer or as concerned residents.

Steve Funk of Roetzel & Andress, 222 S. Main Street, Akron, spoke as counsel to the developer. He wanted to address some of the issues mentioned at the April 16 meeting. He first addressed the issue of how the Planning Commission recommendation should be interpreted. He stated the Law Director looked into the matter and advised that the legislation was specifically for the 110 units at a 3 star subdivision/5 star home rating. Mr. Funk feels that Council must allow for a reduction in density and, therefore, asked Council to allow flexibility for a lower star rating as long as the checklist and chart requirements are met. He indicated there are many reasons why the City would not want to have all homes be built at a 5 star rating. He indicated a 1 star rating is more green than most homes being built today. A 3 star is still a very aggressive green home. The chart shows a 3 star home rating would equal 96 homes. If the developer cannot get more flexibility from Council on the star rating, they will not be able to go forward with the development. A 5 star home approval by Council would, in essence, be a denial. He would like Council to either adopt the chart that is in the Planning Commission file or make an amendment to the legislation that would allow the developer to build at a 3 star level. The next issue he addressed was the comments about amending the Code to include a maximum density. He indicated that the residential conservation has a maximum density of 25% but that the green overlay was intended to be different and was designed to be flexible. He stated that if the City were to amend the Code to adopt a maximum

density, he would ask that it not apply to the developer's application since they applied under the current Code. He reiterated that the project started out at 150 units and is now at 110. He stated it needs to be a 3 star home rating with 96 units and if it gets scaled back even more, it would be a denial.

Richard Bancroft, 6650 W. Snowville Road, Brecksville, is from Drees Homes. He stated that in most ratings, a 1 would represent "budget" and a 5 would represent luxury. The table being discussed looks at a zero, which is what is currently built in the U.S. A zero is a non-green home. There are additional costs involved for them to meet a 3 star level. They cannot meet a 5 star standard. On the table that was put together by Mr. Guerra, a 5 star must achieve 350 points, a 4 star 250 points and a 3 star 180 points. Some examples of achieving points are switching to cf bulbs, however these bulbs have high levels of lead and mercury. Points are also given for minimizing the amount of dirt that is moved, using compost to stabilize, using worm beds for garbage disposal and having composting toilets. The public is just not ready to embrace some of these things. Bonus points are awarded for no carpet, detached garages and no turf grass. For the City to make a statement to the green community that they are going to do a 3 star is a major step in a market that is economically challenged. High quality homes of green level are not seen anywhere else in the country except Oregon and Washington. They are committed to meet that level. To take it beyond that, it becomes impossible.

Mrs. Hummel asked how long Mr. Bancroft has been with Drees homes and whether he ever supervised any other green building project. Mr. Bancroft stated he has been with Drees for three years and that when he was with Horizon Construction, they built some 1,200 – 1,800 s.f. homes in Cleveland and made them as green as they could but the public did not buy them. The greenest house built was sold below cost. Mrs. Hummel asked if he ever did any silver or lower level with Drees. He replied that very few homes are at a silver level and that the ones in Oregon and Washington are the most popular. She asked if he had done any level of green building with Drees. He stated Drees has been embracing green concepts and have incorporated them into building programs but has done nothing at a 3 star level.

Mrs. Colavecchio asked if there were any incentives to homeowners to purchase green, such as tax credits. Mr. Bancroft stated there were not.

Robert Benjamin, 34555 Chagrin Blvd., spoke on behalf of Heritage Homes. He stated his company has operated in good faith and is taking a large risk by making this the first green development in this area. This whole process has taken a lot of time. They worked in good faith, followed the City's new code which has green overlay, followed advice of administration, staff and planning commission, listened to what the people said, and brought in the best builder in town. They are asking Council to modify the recommendation to allow them to reduce the energy efficiency level which would reduce the density. He added that this is just one step in the whole process and that they still have to meet preliminary plat and engineering approvals.

Don Nelsch, N. Haven Blvd., stated he was a member of the Planning Commission and was involved with the decision. One of the conditions under which he voted to approve the development was the table. If the developer would meet the 5 star, he would have 110 homes. If not, then whatever the next star down is would be what he would be permitted to build. In his opinion, when the recommendation was passed, the 110 was not cast in concrete.

Mike Battaglia, 4779 Quick Road, again expressed concern that Council should be aware of past negative press about Heritage Homes. He felt the City needed to be cautious when choosing who it works with. He did not feel the residents were being adequately heard by Council or City representatives.

Paul LeMay, 241 Woodridge Dr., mentioned several items with which he was concerned such as the increase in traffic which would cause additional driving headaches for motorists at the bridge on Steels Corners Road near the entrance of Wyndham Ridge and also at the intersection of Steels Corners and State Road. Likewise, families moving into the development would mean an increase in student population in an already overcrowded school system. He also expressed concern about who would verify that the homes met the green star standards. Most items can be modified by home owners. He wanted it to be kept in mind that we are paying the cost first and seeing the benefit later. Lastly, he stated that if the developer cannot deliver, what should be the penalty? The developer says it is a risk and that it has not done this before. Mr. LeMay pointed out that the City is a partner in that risk.

John Weniger, 4081 Bellaire, distributed letters signed by all of the residents in the area surrounding this development. The only resident who did not sign the letter was a City employee who declined. He pointed out that each letter is a voice of a resident. They are not against green overlay, only against the density. He asked that Council research the past record of Heritage before voting on this project.

Bill Miklos, 4716 Quick Road, stated that Tamsin Park has been replaced by a development with the area to the south being condos and the houses are 10 feet apart. Buckeye Sports Center is being considered for a housing development. He wants their little corner to be left alone or kept at the R-1 zoning.

Mrs. Hummel thanked everyone for their comments and appreciated everyone's candor. She stated she wished the Planning Commission had heard Mr. Bancroft's statements because they may have made a different decision. However, that is over and Council is faced with the legislation before it, and she did not feel there was a consensus. She felt there were four choices to be made by Council members: (1) approve the regulating plan as is; (2) deny the plan; (3) amend the plan and approve it as amended; or (4) send it back to the Planning Commission. She did not feel anyone wanted to approve the legislation as it stands and could not predict what would happen at the Council meeting. If the plan were to go back to the Planning Commission based on comments from Drees and Mr. Funk, they would need to know what to expect and would need to know the comfort level at the rail. She stated it is a real challenge to build a 5 star level home and based on the chart, she assumed it was possible. That is why the file was amended. She felt the highest bonus she would be comfortable with and in favor of would be a single bonus of 30%. This project has gone on a long time but the delays have mostly been on the part of the developer. The only delay on the City's side was the holding of the legislation from the last committee meeting. She feels the City has operated in good faith on this project. With regard to her comfort level, based on an 85 acre parcel at 1.5 acres each, it would calculate to be 57 units without any allowances for rights-of-way. A 30% bonus, then, would generate 74 units.

Mr. Gorbach agreed that this needs to move forward and felt a vote was owed. He felt everyone agreed, including the developer, that a "yes" vote is not what is wanted on this legislation. 110 units is too many units and 5 star makes no sense to build. He does not want to build something that remains vacant. He is not comfortable with Council amending the legislation at this level, and would feel more comfortable with an amendment coming at the Planning Commission level. The table is not part of the City's Code and was developed to help the Planning Commission to sort through the process. He is in favor of voting "no" with what is in front of Council and leaving the developer with the decision whether it wants to go back to the Planning Commission. He felt that the residents' opinions were important and added that the development is not the problem, just the density. He does not want to make a decision based on 30% and risk unintended consequences of the Code. He feels there are just too many homes planned for that tract of land.

Mrs. Hummel took a moment to clarify a misconception that Council brought in the court reporter who was present this evening. The court reporter was not in attendance at the request of Council.

Mr. Walters stated that until recently, he felt that this development was mandatory to build at a 5 star rating. Now there must be a revision. He did not feel the Planning Commission was given all of the facts regarding home star levels. He agreed the bonus should be higher than a conservation overlay or no one would ever build green. He feels the development should go back to the Planning Commission for further review.

Mr. Flinn agreed that additional bonuses should be granted to green star homes. He also agreed with the developer that should changes get made to the Code, the developer should be exempt from those changes. Mr. Flinn is in favor of this legislation as is at a 3 star subdivision and 5 star homes. He felt the homeowners surrounding the proposed development did a lot of work and presented good information. He does not support Council amendments on the floor. He feels Council needs to vote and if the developer is not able to or cannot build at a 5 star level, he can choose to go back to the Planning Commission to request approval of exactly what he wants to build.

Mr. Mader agreed with Mr. Gorbach and Mrs. Hummel with regard to the development going back to the Planning Commission, especially in light of the developer stating he is unable to attain the 5 star level. He does not feel it is Council's place to amend the Planning Commission's work. He also knows that a function of the Planning Commission is to produce what they refer to as a regulating plan and what it relates to. That has not been manifested yet. If it went back to the Planning Commission, they can establish under the present Code our concerns regarding the density issue. Mr. Mader is not in support of the legislation as it stands and feels it may be conducive to send it back to the Planning Commission so that they can look at the density issue.

Mrs. Klinger asked Mr. Arrington to clarify the process should Council vote the legislation down. Mr. Arrington stated that however Council votes, either party can file an administrative appeal to be filed in the Court of Common Pleas. The loser of that decision can then take it to the Court of Appeals. Mrs. Klinger then asked if Council turns this down and the developer files an appeal and wins, could the developer then proceed as it wants? Mr. Arrington stated it depended on what the court decides. The Planning Commission approved a 5 star home development. The staff report from the Planning Commission recommended the chart in language that could have adopted the entire chart if its intent was to allow any part of that chart. But an amendment was made to require a 5 star development. An appeal would depend on what Council does. The Court of Appeals could affirm, deny or modify Council's decision. Mrs. Klinger then pointed out that Council would run the risk that a development could be approved that would allow even more units. She does not want to see that. She would like the development to go back to the Planning Commission to rework the density issue and then the developer could come back to Council with something less than what is on the table today.

Mrs. Colavecchio agrees with all of the comments. She is not in favor of supporting this legislation as written. She would like to see the developer go back before the Planning Commission in order to calculate a proper density bonus that everyone can live with. She would also need to know if the chart was being incorporated in its entirety. She also feels buyers need incentives to build green.

Mrs. Hummel asked Mr. Arrington if the legislation were to be voted down, what option did the developer have to go back to the Planning Commission right away. It was her understanding that the Code required a one-year waiting period unless a major change was made. She wanted to make sure the waiting period did not apply in this case. Mr. Arrington stated he would need to research that issue.

Mrs. Hummel asked for agreement to bring this out for a vote next week and she would comment that it come out for a vote with a referral back to the Planning Commission.

Mr. Gorbach expressed some concern with Council telling the developer to go back to the Planning Commission versus what the developer's options were.

Temp. Ord. B-11 was brought out without a recommendation.

The meeting adjourned at 7:50 p.m