

**THE CITY OF KENT, OHIO
LAND USE COMMITTEE
WED., MAY 7, 2008**

This meeting of the Land Use Committee of Kent City Council was called to order at 7:14 p.m. on Wed., May 7, 2008 by Garret Ferrara, Chair.

PRESENT: MR. AMRHEIN, MR. DELEONE, MR. FERRARA, MR. HAWKSLEY, MR. KUHAR, MS. SHAFFER, MR. TURNER, MS. WALLACH, MR. WILSON

ALSO PRESENT: J. FENDER, MAYOR; W. LILLICH, ACTING CITY MANAGER; J. SILVER, LAW DIRECTOR; J. BARONE, DEVELOPMENT ENGINEER; AND S. CHESTNUTWOOD, ACTING CLERK OF COUNCIL

ABSENT: D. RULLER, CITY MANAGER
L. COPLEY, CLERK OF COUNCIL

At this time, the Law Director administered the oath of offices to those wishing to speak on the next subject, the White Oak Hills Phase III Subdivision Variances.

Jennifer Barone, Design Engineer: Ms. Barone said the White Oak Hills Subdivision, Phase III is asking for three subdivision variances. She said the first variance was for a section of sidewalk. She said the Code requires sidewalks on both sides of the street, adding they have an area where no lots front the street. She said they are asking a variance to not install the sidewalks. Ms. Barone said that because of the existing grade, the staff supports this variance. She said the Planning Commission also supported this variance.

Ms. Barone said the second variance deals with the sanitary sewer. Ms. Barone said they worked with the developer and came up with a block of land that would be dedicated to the City to connect this subdivision to the sanitary sewer. She said the utilities were to be taken to the end of the property line. Ms. Barone said the sanitary sewer has not been constructed, and the developer is requesting it not be constructed at this time. She said staff did not support the variance, but the Planning Commission supported the variance, and recommended its approval.

Ms. Barone said the third variance is a grade issue. She said that grading is required by the Code for proper drainage. She said the staff believes grading should be completed. She said the developer is requesting a variance so they do not have to do the grading. Ms. Barone said the Planning Commission is not recommending approval of this variance.

Ms. Wallach asked for clarification on grading, and Ms. Barone displayed the grading plan to clarify the area. Ms. Wallach asked how Ms. Barone felt about the developer's claim to save more trees by postponing the grading, and Ms. Barone said there would be no way the driveways would be installed or lots would be developed without removal of the trees.

Mr. Wilson returned to the variance for the sidewalk. He questioned if houses could be built later, and Ms. Barone said they could not be built. Mr. Wilson asked if they are unbuildable lots, and Ms. Barone said they are not deep enough.

Mr. Kuhar asked if they allow the developer to not install the sanitary sewer if the next developer would be responsible for the costs, and Ms. Barone said that was correct.

Mr. Kuhar asked the depth of dirt that needs grading, and the repercussions of not grading. Ms. Barone said they are not trying to cause an undo hardship on builders that may want to develop those lots. Mr. Kuhar said that without grading, they may not have proper drainage to carry the water. Ms. Barone said that was possibly true, and explained she has concerns about erosion. She said there are some areas

where eight feet of dirt would be removed during the grading. Mr. Kuhar said Ms. Barone had mentioned a performance bond, and Ms. Barone said the City's procedure is when a street is ready for dedication, the developer will post a bond for the work that has not been done. She said their agreement is with the developer. Mr. Kuhar asked if they can require the developer to put up a bond to ensure the grading will be done, and Ms. Barone said they cannot require it if the variance is granted. Mr. Kuhar asked if the variance can be conditional on the bond, and Ms. Barone said they could do that, although it would be the same as denying the variance. Mr. Kuhar asked the cost of the grading, and commented the bond would be returned if the work is done, and Ms. Barone said the cost of grading would be \$7,448. Mr. Kuhar questioned fighting a variance for that amount, and Mr. Ferrara noted it was a rhetorical question.

Mr. Hawksley said he was assuming there was a park fee in lieu of open space, and Ms. Barone said she believed that was correct. Mr. Hawksley said he has not considered a variance since he joined Council. He asked if they do not install the sidewalk if they pay the park fee, and Ms. Barone said the fee is per lot. Mr. Hawksley said if they are given a variance, it would be a cost savings to the developer.

Mr. DeLeone said he was a little confused about Whitewood Drive. He asked if the roadway is being constructed, and Mr. Barone said not at this time. Mr. DeLeone said the future developer would be responsible, and asked how many feet. Ms. Barone said the sanitary sewer was about 157 feet.

Mr. Hawksley said he is hearing the street would not be built. He asked if it would be bonded. Ms. Barone said it was bonded for the sanitary.

Mr. Ferrara called for audience comment at this time.

Dave Williams: Mr. Williams explained he was present on behalf of the developer. He said there are twelve lots at the end of the development, in Phase III, on Nicholas Drive. He said the lots will not be developed on the east side. He said the City is not losing any money, as the lots are not buildable. The sidewalk will go nowhere nor service anything, as there are no houses nor a road.

Mr. Williams said the Planning Commission recommended a curb cut going across Adrian Drive, so people could cross the street safely. He said that it is hundreds of feet off the road, and is a swamp. Mr. Williams said it is not buildable. He questioned why they would install a sewer line when there will be no roads, curbs, or storm sewers. He said the Code does not say it has to be extended to the end of the lot, and his understanding is that has been the practice. Mr. Williams said this area goes to a woods, with no plans for development.

Mr. Williams said the Planning Commission recommended the variance, as it goes nowhere and has no connection. He said that Forest Lakes is hundreds of feet away, and the land is swamp and not buildable.

Mr. Williams displayed pictures at this time, adding that the developer wants to leave it as it is, which is a woods. He said no one could build in that area and address all of the issues. He said the woods goes into a wetlands. He said a nice home could be built higher, but he is not an engineer, nor does he have any idea how to engineer it. He said someone would have that option, and whoever builds on that land must have a site plan approved.

Mr. Williams said the bond is a mortgage on his clients home that cannot be used. He said it is about \$15,000 cash, and they would like it released. He said Ms. Wallach mentioned trees, adding the Code said they are to preserve as many trees as possible. He said they may be able to design something to fit between the trees. He said if they grade it now, they will be skimming a treed lot, reseeding it, and ending up with a wheat field. Mr. Williams said it does not make sense to take away all of the options from those wishing to buy the lots. He suggested they let the people buying the lots decide on the grading, with the City having the final call as they approve the site plan.

Mr. DeLeone asked how deep the catch basin was for the sanitary sewer, and if a pump station would be needed, and Ms. Barone said it would service the property.

Ms. Shaffer asked how many lots were involved, and other Committee members indicated they had a total of twelve lots. Ms. Shaffer asked if they were talking about grading all of them, and Ms. Barone said it was about seven lots. Ms. Shaffer asked if they were consecutive, and Mr. Williams said they go around the cul de sac. Ms. Shaffer asked if they would all have to approach the City individually, and Mr. Williams said that was correct. He said that they would still have to get final approval on their house and the grading.

Mr. Kuhar asked who has the sewer line, and Mr. Williams said it is the City's line. Mr. Kuhar said they are talking about the cost of 150' of the line. He said it looks like a scalped hill that would be the road, and asked whose property would be the scalped hill. Mr. Williams said it is the developer who handles the property owner. Mr. Kuhar asked if the variance was granted, if the developer would do something about the cliff, and Mr. Williams said that was correct. Mr. Kuhar asked about any guarantees, and Mr. Williams said they could leave the bond in place until it is done.

Ms. Wallach asked if the variance was granted for the sanitary sewer, and there was development if the City was responsible, and Mr. Williams said it would not be the City's responsibility. Ms. Wallach commented they were pushing the expense off on the other developer. Mr. Williams said it is the City's Code, adding they can seek reimbursement, but there was no one to reimburse, as the land is a swamp.

Mr. Wilson said he is not an engineer, and questioned the cost of the box, and Mr. Williams said he did not know. Mr. Wilson asked if they felt it was not needed, why did the developer not request it at that time. Mr. Williams said they were aware it was needed for connection purposes. He said the line goes down the east side and under Adrian Drive. Mr. Williams said the question is whether they run from the box to the last 150 feet. Mr. Williams said he was assuming that the developer recognized the possibility of extending the line before, and Mr. Williams said that was requested when the site plan was done. He said it made no sense, but because the Code said they had to make arrangements, that is what they did.

Mr. Hawksley said it sounds like it has been three years since the plan was approved, and Mr. Williams said it was actually longer. Ms. Barone said it has been two years for the actual construction period. Mr. Hawksley said that obviously the City was happy with the approval, and now the developer is coming back at the end of the project not wanting to do it. He asked if they had negotiations previously, and Ms. Barone said they had many discussions at the beginning.

Mr. Turner said the language for the staff recommendation said the grading must be followed to not create an undue hardship. He asked what this means, and Ms. Barone said a grading plan was presented and approved, as proposed by the developer, and staff feels it must be followed. Mr. Turner said they have not met that requirement, and Mr. Williams said when the land was done a few years earlier, it was lines on the paper. He said as they got to the last seven lots, it did not make sense, which is why they are asking not to do it.

Ms. Wallach asked why the Planning Commission did not recommend the grading variance, and Ms. Barone said they did not want to create undue hardship to the future homeowners. Ms. Wallach commented it would be an additional expense for the homeowner that would not be incurred if the developer did the grading.

Mr. Fender asked if there was a precedent in the City's history, and Ms. Barone said this was the first time she dealt with it.

At this time, there were no further audience comments.

MOTION TO APPROVE THE THREE VARIANCES REQUESTED.

Motion made by Mr. Kuhar, seconded by Mr. DeLeone.

Mr. Kuhar said it appears the sidewalk issue is covered, with no harm to anyone. He said the sanitary could be done by a future builder, adding the City will have access to the box. He said his concern is with the cliff, adding that is a definite problem. He said he would support the variance if the developer agreed

to keep the bond in place until it was seeded.

Mr. DeLeone agreed with Mr. Kuhar. He said he did not know where the cliff was, but there was a hill. He said the burden would be on those buying the lots.

Ms. Wallach asked if they could split them up, and it was pointed out they had a motion on the floor already.

Mr. Wilson said he agreed with the sidewalk variance, was about 50% in favor of the grading variance, but against the sewer variance. He said he has seen it happen before, when a line is not extended, and the City ends up paying for the extension. He said if something happens, they will pay for it as they are giving a variance from their code.

Mr. Hawksley agreed with Mr. Wilson. He said if the designers or the homeowners wanted to keep the grade, that is fine. He said this gives the City assurances, and supported the staff's recommendation.

The motion failed by a voice vote of 2-6-1, with Mr. DeLeone and Mr. Kuhar supporting the motion. All other members dissented, except for Chair Ferrara, who abstained.

MOTION TO ADOPT THE STAFF'S RECOMMENDATIONS FOR THE VARIANCES.

Motion made by Mr. Hawksley, seconded by Mr. Wilson, and failed by a voice vote of 4-4-1.

MOTION TO CONSIDER THE VARIANCES INDIVIDUALLY.

Motion made by Ms. Wallach, seconded by Mr. Kuhar, and carried by a voice vote of 8-0-1, with Mr. Ferrara abstaining.

MOTION TO APPROVE THE FIRST VARIANCE, FOR SIDEWALKS.

Motion made by Mr. Wilson, seconded by Mr. Hawksley, and carried by a voice vote of 8-0-1, with Mr. Ferrara abstaining.

MOTION TO APPROVE THE SECOND VARIANCE, FOR THE SANITARY SEWER.

Motion made by Mr. DeLeone, seconded by Mr. Kuhar, and failed by a voice vote.

MOTION TO APPROVE THE THIRD VARIANCE FOR GRADING.

Motion made by Mr. DeLeone, seconded by Mr. Kuhar, and carried by a hand count of 5-3-1, with Mr. Ferrara abstaining.

MOTION TO SUSPEND THE ORDER OF THE AGENDA, MOVING THE FINANCE COMMITTEE BEFORE THE STREETS, SIDEWALKS & UTILITIES COMMITTEE.

Motion made by Mr. DeLeone, seconded by Mr. Hawksley, and carried by a voice vote of 8-0-1, with Mr. Ferrara abstaining.

Hearing no further business before this Committee, Chair Ferrara adjourned this meeting at 8:03 p.m.

ACTION RECOMMENDED:

- 1) **TO GRANT THE SUBDIVISION VARIANCE FOR THE SIDEWALKS AND GRADING, DENYING THE VARIANCE FOR THE SANITARY SEWER FOR WHITE OAKS SUBDIVISION, PHASE III.**

Transcribed by Linda Copley on the 10 day of May, 2008.