

The meeting of the Council of the Village of Chagrin Falls was called to order at 8:00 p.m. by Mrs. Evans.

Member present: Evans, Herdman, Holdren, Lutz, Newell, Subel
Members absent: Patton
Officials present: Bloom, Himes, Vedder, Brosius, Byron, Lannon

Moved by Mr. Subel, seconded by Mrs. Lutz that the absence of Mr. Patton be excused. Carried. Ayes: Evans, Herdman, Holdren, Lutz, Newell, Subel. Nays: None.

APPROVAL OF MINUTES

Moved by Mr. Newell, seconded by Mr. Holdren that the minutes of the meeting held October 14, 2013 be approved. Carried. Ayes: Evans, Herdman, Holdren, Lutz, Newell, Subel. Nays: None.

REPORT OF THE MAYOR

On behalf of the Mayor, Mrs. Evans thanked the voters for the passage of the renewal tax levy. She said we really appreciate the support of the voters on that.

REPORT OF THE FINANCE DIRECTOR

No report.

MEMBERS OF THE PUBLIC TO SPEAK TO AGENDA ITEMS (NOT TO EXCEED TWO (2) MINUTES PER PERSON)

None.

REPORT OF THE LAW DIRECTOR

AUTHORIZATION TO ADVERTISE FOR BIDS

Mrs. Evans introduced Ordinance No. 2013-71 entitled:

AN ORDINANCE AUTHORIZING THE CLERK TO ADVERTISE FOR BIDS FOR VARIOUS MATERIALS, SUPPLIES, REPAIRS, AND CONSTRUCTION FOR THE YEAR 2014.

Moved by Mrs. Evans, seconded by Mr. Newell that the requirement for reading an ordinance three times be suspended. Carried. Ayes: Evans, Herdman, Holdren, Lutz, Newell, Subel. Nays: None. Moved by Mrs. Evans, seconded by Mrs. Lutz that the ordinance be adopted.

Carried. Ayes: Evans, Herdman, Holdren, Lutz, Newell, Subel. Nays: None. Mrs. Evans said this allows us to go out for bids for various materials throughout the year for construction projects, repairs, and supplies. They still have to be approved by Council; this just gives us the right to proceed with that. It is a housekeeping thing that we do every year.

FUNDS TRANSFERRED AND APPROPRIATED

Mrs. Evans introduced Ordinance No. 2013-72 entitled:

AN ORDINANCE TRANSFERRING FUNDS AND APPROPRIATING FUNDS.

Moved by Mrs. Evans, seconded by Mrs. Lutz that the requirement for reading an ordinance three times be suspended. Carried. Ayes: Evans, Herdman, Holdren, Lutz, Newell, Subel. Nays: None. Moved by Mrs. Evans, seconded by Mrs. Lutz that the ordinance be adopted. Carried. Ayes: Evans, Herdman, Holdren, Lutz, Newell, Subel. Nays: None. Mr. Bloom said this is the distribution of the estate tax that we received last week from the county. It brings our total for the year to about \$492,000. By law we have to receive that money into the general fund and then we, as policy, transfer it out to the capital improvement fund. Mrs. Evans said the amount is \$164,676.06 and it is a housekeeping issue that we have to do.

AUTHORIZATION TO ENTER INTO A LICENSE AGREEMENT WITH SPILLWAY

Mrs. Evans introduced Ordinance no. 2013-73 entitled:

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A LICENSE AGREEMENT WITH SPILLWAY, LLC., TO PERMIT IMPROVEMENTS IN THE VILLAGE'S RIGHT-OF-WAY.

Moved by Mrs. Evans, seconded by Mr. Holdren that the requirement for reading an ordinance three times be suspended. Carried. Ayes: Evans, Herdman, Holdren, Lutz, Newell, Subel. Nays: None. Moved by Mrs. Evans, seconded by Mrs. Lutz that the ordinance be adopted. Carried. Ayes: Evans, Herdman, Holdren, Lutz, Newell, Subel. Nays: None. Mr. Holdren said this is a license agreement to develop on the right-of-way at the furthest west side of their property where it meets the street. Because those roads were changed years ago when the new bridge was built there is a section of that that they have actually been using that looks like it is on their property but is actually the village's right-of-way. Mrs. Evans said these are all included in the variances that we will be approving later. Mr. Holdren said the variances are to develop and this is for the license agreement. Mr. Subel mentioned that in Section 2 of the agreement it says we can cancel within sixty days but then in Section 8 it says they can cancel the insurance policy with a thirty day written notice. So, they can cancel the insurance in thirty days and it looks like we can't cancel for thirty days after that. Should those days be the same? Mr. Byron said we should look at that. Mr. Newell said it makes sense to have them both be

the same amount of time. Mr. Byron said we have the authority to make changes to the license agreement within the legislation. What we will do is make that change, both thirty days, and the Mayor will execute the agreement based on that change.

AUTHORIZATION TO ENTER INTO AN EMERGENCY MEDICAL SERVICE AGREEMENT

Mrs. Lutz introduced Ordinance No. 2013-75 entitled:

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN EMERGENCY MEDICAL SERVICE AGREEMENT WITH THE CHAGRIN FALLS SUBURBAN VOLUNTEER FIREMEN'S ASSOCIATION, AND DECLARING AN EMERGENCY.

Moved by Mrs. Lutz, seconded by Mr. Herdman that the requirement for reading an ordinance three times be suspended. Carried. Ayes: Evans, Herdman, Holdren, Lutz, Newell, Subel. Nays: None. Moved by Mrs. Lutz, seconded by Mr. Herdman that the ordinance be adopted. Carried. Ayes: Evans, Herdman, Holdren, Lutz, Newell, Subel. Nays: None. Mrs. Lutz said we have a three-year contract for EMS service with the Suburban Volunteer Firemen's Association and that is up for renewal. We had a Safety Committee meeting last week and we went over this. There was a zero percent increase last year and there is going to be a zero percent increase the first year of this agreement and then it is a two percent increase in the second year and a three percent increase in the third year. This is less than the consumer inflation index so we think it is a wonderful value to us for so many reasons. It was unanimously passed by the Safety Committee. Mr. Subel said I think it is wonderful that they have been able to keep costs so low for so long and they do a great job. Thank you to them. Mr. Newell said I would like to second that. The services that they provide are excellent and the fact that you can do it without increasing costs is fabulous. Keep up the good work. Mr. Newell said this ordinance would not take effect unless all the communities agree to signing their three-year contract so this is tentative.

VARIANCE REQUEST - 218 CLEVELAND STREET

Mr. Holdren introduced Administrative Order No. 2013-74 entitled:

FINAL ORDER OF COUNCIL AND CONCLUSION OF FACT REGARDING A VARIANCE REQUEST OF SPILLWAY, LLC FOR PROPERTY LOCATED AT 218 CLEVELAND STREET.

Moved by Mr. Holdren, seconded by Mrs. Lutz that the administrative order be adopted. Carried. Ayes: Evans, Holdren, Lutz, Newell. Nays: Herman, Subel. Mr. Byron said the controversial one, the seating variance, is the one that has been withdrawn. There has been a re-submission of that to the BZA for a lesser variance, which will be accompanied by a request

for evidence indicating how they will operate their facility not to have a parking problem that is driven by the additional seating. If we walk through the various requested variances and there is a consensus of Council that does not agree with the recommendation of the BZA, I think we would do well to revise this to reflect that consensus. But, if we walk through them and a majority of Council is on board with the passage of each of them, this vehicle allows that to occur. If the majority of Council wants to affirm what the BZA recommended this allows them to do that. If any specific individual doesn't agree with one or all of them that can be addressed also. We need to get more sophisticated in terms of shifting majorities. We haven't had to do that on previous requests where you've gotten a block of variance requests and they have been handled in a single conclusion of fact document. We could get more sophisticated where we need to say four voted for this one and four voted for that one. I would recommend walking through and talking about the variances and see where Council is on that.

- (1) Section 1139.04(b) requires a five foot (5') buffer between parking areas and the public right-of-way. The Applicant is seeking a variance from this provision because the parking area in front of "Building 2" extends into the public right-of-way.

No comments.

- (2) Section 1133.03 requires the Low Street parking lot to have a twenty foot (20') setback from the public right-of-way and a ten foot (10') setback from the adjacent residential parcel. The Applicant is seeking a fifteen foot (15') variance resulting in a five foot (5') setback from the public right-of-way and a ten foot (10') variance resulting in no setback from the adjacent residential parcel.

Mr. Himes said the Spillway folks and the two residents and one property owner on Low Street got together and worked out an agreement. The agreement has some conditions in it that will require a variance. The homeowners would like a solid fence on the property line. Our code would require a three foot setback so on that westerly property line with the parking lot they have agreed that they would have a solid fence. They asked for some trees and some signage on Low Street so that traffic isn't going past the parking lot entrance and then having trouble turning around. Those could be accommodated and we would have to add that variance for the fence to the BZA docket. We could simply add it to their agenda because in the original advertisement that variance was included. They had originally proposed a board-on-board fence, which complies with our ordinance so we will add that to the BZA's list of variances for the 26th. They have applied for the seating variance again, the lesser seating, so we will add this on to that. Mr. Byron said granting this variance and that further variance would allow the parties to reach the accommodation that they have here.

Mr. Herdman said I think that the letter represents a really encouraging development. I was very happy to see it because I thought it was great that the residents and the developers were able to get together and come up with this. One of the things I have talked about in the past is with respect to this parking lot I realize that it is currently zoned parking but it was parking that was used for different hours, different times of the day than what is currently envisioned under this particular proposal. So, I think that in the letter it addressed the fact that there will be posted a sign that says employee parking, which I realize there might be a lack of enforcement mechanisms available to actually make sure that only employees park there but at the same time the agreement says it will deter parking from patrons who would be going to the restaurant, which I think is important from a safety standpoint. Is there a way then, Mr. Byron, would that be included in the variance as well? To me that condition is important with respect to the passage of the zoning variance for this particular lot. Mr. Byron said I think there is nothing wrong with the property owner putting a sign up saying employee parking. I think the enforceability of that from a zoning standpoint is not a viable option. However, posting the sign would allow the property owner to enforce that rule. Mr. Himes said I agree with that. For the village to try to enforce it is virtually impossible. The property owner could enforce it with some type of permit system. Mr. Holdren asked, can the village say that they have to put that sign up? Mr. Himes said our code allows for that type of directional sign so they could post it. I guess the question is whether the BZA wants to make that a hard condition of the variance. If they want to see employees parking there and only parking there, there would have to be some sort of mechanism for enforcement or permits. Mr. Herdman asked, if there is a change in property ownership is this going to attach to the property? Mr. Byron said I don't see this agreement containing enforcement provisions. It indicates that these were topics of discussion. It indicates to me what the current ownership is willing to do. If it came back to the BZA and they determined it was a legitimate and reasonable requirement to say employee parking only and we thought that the village had the capacity to enforce that, it could be a requirement of the variance.

Mr. Subel said I look at this latest development almost like if the neighbors around somebody that wanted a variance said we are okay with it then the village should approve it. I don't think this is good variance to approve from the standpoint of my understanding is the current lot takes about ten cars with all the setbacks and the history has been they come in the morning and quietly go to work and then at 4:00 p.m. they leave. This would allow twenty-six people, many of who may not be repeat people. They would be coming for the first, maybe the last time at all hours of the day and into the wee hours of the morning. It would be people coming from the brewery and the restaurant and they could be loud and maybe intoxicated. Saying it was a parking lot once is no different than we are proving here. I think it is saying white is black. It is so different to me. We are putting this right in, literally next to a residential area and then in the middle of a larger residential area and just because the people that are close by say hay, it's okay that doesn't make it right in my mind. Although, I don't disagree at least the people who live there now sound okay with it but should ownership change either in any of those three

lots or with Spillway I think we will look back and say it was a mistake.

Mrs. Evans said I believe Ivex was running three shifts at one time and they had round-the-clock employees. Employees were coming and going at all times of the day so to say it started at 8:00 a.m. and they left at 4:00 p.m. is really not accurate. They were probably there 7:00 a.m. to 3:00 p.m. and then have a second shift and then a third shift. I know when I first started on Council when I was coming to meetings we had noise complaints all the time from people on High Street with the trucks delivering down there. I am not sure that I agree with that.

Mrs. Lutz said I think there are some unfounded fears about what type of place this is going to be. I have lived in Chagrin for a long, long time and if you consider the types of people who are dining in Chagrin Falls on a weekday night its all over by 9:00 p.m. They are not unruly, they are nice people, they are our neighbors, and I think it is going to be the same kind of crowd. I don't think it is going to be people leaving at 1:00 a.m. and creating a scene and acting inappropriately.

Mr. Herdman said I disagree with that. My concern about this particular lot is that on this street with the use that is going to be envisioned across the street and what patrons are going to have to do to get to the Spillway development I am concerned about the safety that is involved there. I have not heard yet a workable solution to what I consider to be a very significant problem. If there are going to be unenforceable conditions then I guess I do have a problem with this particular variance. I would like to see, at the very least, the incorporation of some of these conditions into something from the BZA. I am reluctant to vote on something that is a half measure at this point in time. I might even be comfortable if there is on the record a discussion about the employee parking sign and the impact that that might have on safety. I just think that there needs to be some record made as to the consideration of the safety factors here. The way that it is currently drafted, I don't see that here.

Mr. Newell said we live in a community that has a critical shortage of parking. Our parking facilities are our number one complaints, that and fast cars. We are fortunate that there are ten, twenty, twenty-five, twenty-six spots that are available to try to mitigate some of the parking and get them close. The parking problem we have is that people want to park ten feet from the front door and they crowd everything in the vicinity of where their destination is. I am very concerned about the safety issue and I hope this is addressed more in this traffic study. I think we have to utilize that space for some parking and the ideal situation is that it is employee parking who will get there earlier and leave at night and it won't be so much in and out traffic at that location and if we can some way of documenting in their leases or something that employees, when they go through training, are told they park there. Anything we can do to help enforce that on a voluntary routine and hopefully the tenants see that it is to their advantage to leave the spaces open for their patrons and not for their employees on the main site of the project. People are going to have to have some different driving habits on Cleveland Street,

this is a given, and hopefully no one gets injured until we learn how to adjust to the increased traffic. I think we need to utilize every open square foot we can to provide parking in this village.

Mr. Holdren said there are about ten spots so that is still ten people that can park there legally without any variance and they still have an issue crossing the street. The other sixteen spots that aren't there are people who want to go to Spillway are going to be parking elsewhere on the streets and you still have the same issue of crossing the street. This current plot of land, although it is not paved, it is a stone parking lot so these variances, they are not cutting down trees to make it bigger. This is what is being used for now if you had a need for people to park there. All are not legal I guess to put twenty-six cars there but right now the actual space could hold that many.

- (3) Section 1142.05(b) requires parking areas with fifty or more spaces to have at least five percent (5%) of its parking area for landscaping. The Applicant is seeking a variance of .9% resulting in 4.1% of its parking area being landscaped.

Mr. Holdren said the BZA unanimously approved this because looking at the lot this isn't just a big square lot, it is separated into several different parking areas, which I think limits that impact of vast pavement. And then if you also picture the other two lots in Chagrin that are that big they have no landscaping currently; the plaza parking lot and the municipal lot across the street. I don't think this is a very big variance.

Mrs. Lutz said I could see how that would be important if you had a huge lot and you wanted to have landscaped areas dividing it to breakup the vastness of it but it is already well broken up.

Mr. Subel said I read this as a virtual one hundred percent variance in that the purpose of the variance, and somebody before us determined that for fifty spaces you do need something to break it up. The other parking lots were probably designed that way before we had this code, I am guessing. All this landscaping is on the periphery which says to me that there is nothing in the middle. In a sense, there is nothing breaking it up. Mr. Holdren said some of it is actually on the peripheral, I know that was common at the BZA but I know it wasn't all of it.

It was said that it looks like lights or something that are an island and there is some landscaping around the lights. Mr. Himes said a pretty good chunk of the area is taken up in the corners of the parking lot where you can't fit any parking spaces, whether that meets the strict intent of the code I am not sure but they counted that towards their interior landscaping. Mrs. Evans said it says only a .9% variance. Mr. Holdren said our code actually says 5% not counting the exterior and what Rick is saying is that their 4.1% actually includes the exterior. Mr. Subel said the purpose of the code is to break up the vastness of the lot but if they put the

stuff on the outside you are not breaking anything up. Mr. Holdren said I think you are right in the fact that the 4.1% does include that but looking at the plans it is both; it is on the exterior and it is breaking it up. Mr. Subel said so it might that 3% of the 5% is being covered. Mr. Holdren said I can't remember why we included the 4.1% as part of their plan whether it was looked at in terms that our code actually does allow that. Mr. Himes said it is borderline. It depends on how you interpret what the interior to the lot is. If the lot is a rectangle those corner sections are interior to the entire lot. It talks about breaking up the expanse pavement; does it really do that? I don't know. Mr. Herdman said the tradeoff obviously would be less parking spots if there was more landscaping required. Mr. Himes said correct. Mr. Subel said I see a lot of this as being that the variances are substantial. For example, this to me the way it was described is a 100% variance because there is nothing to break up the expanse. But, the property owner, if you look at those 8 things that we evaluate variances on in the code to me, for example, this would be substantial, the property owner purchased the property with knowledge of the restriction, the property owner's predicament feasibly can be obviated through some method other than the variance, and the variance request is based on circumstances that are self-created by the owner. To me somebody is starting with a piece of property that wants to put 250 seats, maybe 370, a pavilion, a movie theater, nothing says all that has to be there so by putting all that stuff in we are trying to stuff ten pounds into a five pound bag creating the need for variances. I think our code is pretty good and if the whole project were not as large as it is they probably wouldn't be asking for any of these. It is more than just parking versus whatever the trade-off is, maybe we are trying to stuff too much into this place. I see a lot of these as being self created and substantial.

Mr. Holdren said as far as the project getting bigger, from what I understood the actual square footage I've heard it stayed the same or smaller than when it was actually voted on. Mr. Holdren said these are existing buildings and they had a plan to change the zoning and make a new zone for this and the plan that was voted on had that square footage and had this many parking spots and, of course it wasn't as detailed everything about this but this was what was taken to the public and voted on and since then it's actually scaled down.

Mr. Herdman said given the decrease in the amount of coverage that is being provided you are getting some additional parking spots there and I don't think that it is a substantial variance based on the additional parking that is provided.

- (4) Section 1151.03 limits the use of land within one hundred twenty feet (120') of the low water level of the Chagrin River to passive recreation. The Applicant is seeking a variance from this provision because a substantial portion of the Project, including existing structures, is located in this river buffer.

No comments.

- (5) Section 1139.02(a)(6)(b)(2) sets 250 seats as the maximum number for restaurant seating. The Applicant is seeking 460 seats, which would require a variance of 210 seats.

Mr. Holdren said this is the seating variance which they have withdrawn.

- (6) 1353.06(a)(5) prohibits the deposit of fill, including sand, gravel or other materials of any composition in the Special Flood Hazard Zone (SFHZ). The Applicant is seeking a variance from this provision to permit it to add about two to three feet of fill in a small area to reach the required grade.

Mr. Subel asked if there is any liability or risk to the village if FEMA's redrawn stuff does not satisfy this? Mr. Byron said there is not a federal law that would impose liability on the village and since it is the application of the village's laws there is immunity under state law for that application. In answer to your question I would have to say anybody can sue anybody in America but likely hood of recovery is extremely remote and you would have insurance to address the cost of the suit so I would say that the risk to the village is time and annoyance.

- (7) 1353.06(b)(2) requires certification of flood proof construction for any buildings with floor elevations below the base flood elevation. The Applicant is seeking a variance from this provision to permit portions of "Building 2" to continue to have floor elevations below the base flood elevations.

Mrs. Evans said I would like to remind everybody that the BZA approved six of the seven variances that we are presented with tonight and I appreciate the discussion we've had about the Low Street parking and I believe we are all concerned with the safety of everyone who will attend there as well as the neighborhood.

STREETS AND SIDEWALKS COMMITTEE

No report.

FACILITIES AND SERVICES COMMITTEE

No report.

PLANNING AND ZONING COMMISSION

Mr. Herdman announced a meeting for Monday, November 18, 2013 at 7:30 p.m.

SAFETY COMMITTEE

No report.

UTILITIES COMMITTEE

No report.

BOARD OF ZONING APPEALS

Mr. Holdren announced a meeting for Tuesday, November 26, 2013 at 8:00 p.m.

ADMINISTRATION AND COMPENSATION COMMITTEE

Mr. Subel announced a meeting for Monday, November 25, 2013 at 7:30 p.m.

FINANCE COMMITTEE

On behalf of Mr. Patton, Mrs. Evans acknowledged that Council did receive the monthly expenditure report as well as the monthly statement of cash receipts and disbursements for October, 2013.

PARKS COMMISSION

No report.

SHADE TREE COMMISSION

Mr. Himes reported that we just finished the Fall planting and twenty-two trees were planted.

ARTS COMMISSION

Mrs. Evans announced a meeting for Monday, December 2, 2013 at 6:00 p.m.

PARKING COMMISSION

No report.

REPORT OF THE CHIEF ADMINISTRATIVE OFFICER

No report.

REPORT OF THE ENGINEER

No report.

REPORT OF THE POLICE CHIEF

Chief Brosius reported that the Chagrin Valley Jaycees will be decorating on Saturday so we will be accommodating them with some parking spaces around Triangle Park. The Christmas tree will be delivered on Wednesday so we will be blocking off some spaces then as well.

REPORT OF THE FIRE CHIEF

Mark Vedder reported that since Trick-or-Treat was canceled and rescheduled for the next night we thought we would have poor attendance at the haunted fire house but there was actually record attendance this year.

MEMBERS OF THE PUBLIC TO SPEAK TO ANY MATTER (NOT TO EXCEED FIVE (5) MINUTES)

Bob Darden thanked Council for their support.

MISCELLANEOUS

None.

ADJOURNMENT

Mrs. Evans adjourned the meeting at 8:58 p.m.

President of Council

Clerk of Council