

MINUTES OF SPECIAL COUNCIL MEETING
CITY OF UNIVERSITY HEIGHTS
FEBRUARY 28, 2008

Mayor Rothschild called the special meeting to order at 7:30 p.m.

Roll Call: Present: Mrs. Adele H. Zucker
Ms. Frankie B. Goldberg
Mr. Steven D. Bullock
Mr. Kevin Patrick Murphy
Mr. Peter R. Bernardo
Mr. Frank Consolo
Mr. Steve Sims

Also Present: Clerk of Council Nancy E. English
Law Director Kenneth J. Fisher
Finance Director Arman Ochoa
Chief of Police Gary Stehlik
Fire Chief John Pitchler
Service Director Christopher Vild
Building Commissioner William Nadeau
Community Coordinator Walter Stinson
City Engineer Joseph Ciuni

Councilman Peter Bernardo, who is the director of Planned Giving at John Carroll University, welcomed everyone to the university.

Mayor Rothschild explained the process of what happens with a project application when it come into City Hall. She noted that a developer presents his/her project to the Building Commissioner. He reviews the project to determine if it complies with the Code. The project is presented to the Planning Commission for consideration. Mayor Rothschild noted that some projects, like the Waterway Gas & Wash Company's proposal, must go to the Board of Zoning Appeals for the issuance of a Special Permit. If an appeal is filed on the Board of Zoning Appeals' decision then that appeal goes to the City Council for resolution, which is the case with agenda item (A) of this meeting. She noted that finally the City Council acts on the Planning Commission's recommendation, which is the case under agenda item (B).

Mr. Harvey Morrison, 2424 White Road, objected to the Mayor's comment that Waterway Gas & Wash Company was a "fine standing company" during her explanation. He was ruled out of order.

Agenda Items:

A. Appeal to Council of the Board of Zoning Appeals decision of February 14, 2008 by Councilman Frank Consolo for the Waterway Gas & Wash proposal.

Mayor Rothschild reported that all of the emails, letters, testimonials and other communications received by the City are part of the record of the application with Waterway Gas & Wash Company.

Law Director Kenneth J. Fisher reported that on February 14, 2008, the Board of Zoning Appeals determined that a Special Permit should be granted with conditions for the proposed Waterway use on Warrensville Center Road. In addition, the Board approved the hours of operation for the gasoline service station, car wash and fuel deliveries.

Mr. Fisher reported that Councilman Frank Consolo filed an appeal to the Board of Zoning Appeals decision of February 14, 2008 as a matter of general public interest, pursuant to Section 1244.08 of the Codified Ordinances. Mr. Fisher noted that another appeal was filed on February 22, 2008 by a group of residents. Mr. Jack Kluznik, 2308 Loyola Rd., stated that he put together the notice of appeal on behalf of the residents who signed the appeal. Mr. Fisher stated that although there were multiple appeals filed, there will only be one proceeding where all interested parties will be heard.

Mr. Fisher stated that Council shall hear both sides of the issue as to whether the Special Permit shall be granted or not granted. He noted that the standards shall be the same standards that the Board of Zoning Appeals considered, which are:

- (1) that "...the use in the particular area is not likely to be a hazard to the existing and anticipated vehicle and pedestrian traffic movement in the area" See Codified Ordinance (CO) Section 1262.02(b)(7).

- (2) that "...the use is not likely to be seriously harmful to a residential area." See CO Section 1262.02 (b)(7).
- (3) that "The location, size and character of the proposed use is such that, in general, it will be in harmony with the existing development of the district in which the site is situated and will not hinder or discourage the appropriate future development and use of land and buildings in the vicinity or impair their value, and will not conflict with the aims and goals of the General City Plan." See CO Section 1244.03(b)(1).
- (4) that "If the location is in a business district, the size, nature and intensity of operation, the layout of the site and its relation to its access streets are such that vehicle traffic and pedestrian traffic will not be more hazardous, taking into consideration turning movements, sight distances and driveways across sidewalks;" See CO Section 1244.03(b)(3).
- (5) that "the proposed development will be in harmony with the prevailing shopping habits, the physical and economic relationships of one type of use to another, and the characteristic grouping of uses in business districts;" See CO Section 1244.03(b)(3).
- (6) that "the proposed development will not be objectionable to nearby dwellings in residence districts because of noise, fumes or flashing of lights to a greater degree than is normal for uses in a business district." See CO Section 1244.03(b)(3)

Mr. Fisher stated that under CO Section 1262.02(b)(7), the use of gasoline service station is permitted by Special Permit only.

Mr. Bullock asked if Mr. Consolo would make the case for the people. Mr. Fisher replied that Mr. Consolo had a right as a member of Council to request that the matter be heard by the Council, but he will not act an advocate on behalf of Waterway or the residents. Mr. Fisher added that Mr. Consolo is sitting as a member of Council to hear both sides of the issue from the applicant and the residents.

Ms. Goldberg inquired if the burden of proof rest with Waterway. Mr. Fisher responded yes, Waterway must prove that the aforementioned standards plus conditions posed by the Board of Zoning Appeals have been met.

Ms. Goldberg also inquired as to who the court reporter present at the meeting was with. Mr. Jack Kluznik replied that the citizens who filed the appeal retained the court reporter.

Mary Ann Rini, 3866 Tyndall Rd., inquired if Council will make its decision in open session or in private. Mr. Fisher stated that this is a public meeting and that all deliberations will be presented in public.

Mr. Fisher stated that Waterway Gas & Wash Company has requested a continuance until April 7, 2008.

Mr. Consolo questioned whether Waterway Gas & Wash Company had a right to make the request for a Special Permit under 1244.04(a)(2) of the Codified Ordinances and subsequently the right to request a continuance because they do not own the property at 2216 Warrensville Center Road. Mr. Fisher replied that to his understanding Waterway has the property under written contract; therefore, there is property interest, which gives Waterway the right to request the Special Permit.

Mr. James A. Samuels, vice president, Retail & Investment Real Estate, NAI Daus, who was representing Waterway, stated that there is a written contract on the property, which has been in full force and effect since November, 2007. Mr. Consolo requested that Council receive a copy of the contract. Mr. Samuels suggested that a written document from the owner be presented acknowledging that the property is under contract, rather than the contract itself, which would become part of the public record. Mr. Consolo deferred to the Law Director. Mr. Fisher stated that items in a purchase agreement are proprietary and confidential. Mr. Consolo stated that he would like to see what the interest of Waterway is in property and how the company would be harmed if the project should not go forward. Mr. Fisher stated that Waterway would not be harmed at all if the permit were denied. He added that the injury, if any, would be on property owner. Mr. Consolo asked that if Waterway is not going to be harmed then why should they be allowed to be the applicant. Mr. Fisher responded that Waterway has standing by virtue of the purchase agreement because they have a contingent property interest. Mr. Consolo stated that he would like to see what the contingent property interest is. Mr. Fisher requested that Waterway provide, at the earliest point in time, evidence that Waterway does maintain a property interest in the subject parcel by virtue of a writing. Mr. Samuels agreed to provide a writing as requested.

Mr. Consolo inquired that if a continuance is granted until April 7, 2008, is there anything in the Code or State law which says that too much time has lapsed and the Special Permit automatically goes into effect. Mr. Fisher stated that all appeals were timely and the Special permit cannot go into effect because of the continuance.

Mr. Fisher stated that the written request was made on February 26, 2008 for a continuance to the regular council meeting of April 7, 2008. He noted that if the continuance is granted arrangements have been made for the meeting to be held at John Carroll University in Kulas Auditorium at 7:30 pm.

Ms. Goldberg requested that if a motion is made for a continuance that a requirement be made for an independent traffic study to be performed on a Saturday and Sunday of Warrensville Center Road and the streets of Bushnell and Lansdale Roads. She mentioned that the previous study was performed on a Tuesday and is not representative of potential congestion. Mr. Fisher stated that it would be proper to request a second traffic study because one of the standards is that the use is not likely to be a hazard to the existing and anticipated vehicle and pedestrian traffic. Ms. Goldberg noted that she received a suggestion from a resident to close Lansdale and Bushnell Roads to Warrensville Center Road.

Mr. Consolo concurred with Ms. Goldberg regarding the traffic study. Mr. Consolo requested that Waterway also meet the requirements of City Engineer Joseph Ciuni by submitting geometric, grading, utility and storm water management plans for a detailed review of the plans as indicated in Mr. Ciuni's letter of November 26, 2007.

Mr. Bullock stated that he does not want another traffic study performed by a company on behalf of Waterway, but rather from an independent company. Mr. Bullock also stated that if Waterway is going to present something substantially different on April 7, 2008, then he would consider a continuance.

Mr. James Samuels, representing Waterway Gas & Wash Company, stated that Waterway made a written request for a continuance until April 7, 2008 in a letter dated February 26, 2008. Mr. Samuels noted that after hearing the public comments at the last meeting, as part of Waterway's further investigation in requesting the continuance they are in the process of ordering a traffic study for Saturday. He added that Waterway will do whatever is required by the Council with regard to the traffic study.

Mr. Samuels inquired as to what Mr. Bullock meant by a "substantially different" proposal. Mr. Bullock replied that he was not going to tell Waterway what to do, but he wanted to see something different than a gas station, car wash and convenience store proposed for the site.

Mr. Consolo asked what Waterway needs six (6) weeks to do. Mr. Samuels responded that Waterway asked for the continuance in order to allow for continued investigation to address the citizen concerns. Mr. Consolo inquired that if a substantially different plan is submitted, will the project have to go back to the Planning Commission prior to coming before the Council. Mr. Fisher replied that the Council would have jurisdiction to accept the Planning Commission recommendation for preliminary site plan approval, modify it or reject it. He added that the matter would not have to go back to Planning Commission. With regard to the Special Permit, Mr. Fisher noted that if the use would change that is a matter that would be considered under the appeal to the Board of Zoning Appeals' decision.

Again, Mr. Consolo inquired as to what other things does Waterway have to do that will take six (6) weeks. Mr. Samuels replied that the residents felt the project was being railroad through; therefore, Waterway thought it would be a good idea to slow down the process and do further investigation in order to address the residents concerns. Mr. Consolo requested that Mr. Goodman be contacted to find out the specific reasons for the continuance. Mr. Fisher stated that it will also take time to prepare the plans requested by the City Engineer as well as the traffic study.

MOTION BY MR. MURPHY, SECONDED BY MS. GOLDBERG to grant a continuance for Waterway Gas & Wash Company until April 7, 2008 at 7:30 p.m. (tentative location Kulas Auditorium, John Carroll University) with the following conditions:

- 1. that an independent traffic study be conducted by a traffic engineer selected by the City and paid for by Waterway Gas & Wash Company with impact trip studies on weekdays, Saturday and Sunday which shall include Warrensville Center Road as well as traffic on all surrounding streets;**
- 2. applicant must submit geometric, grading, utility and storm water management plans for a detailed review of the plans (as indicated in City Engineer's letter of November 26, 2007).**

Before the actual vote, the floor was open to discussion.

Comments from the Audience

Harvey Morrison, 2424 White Road, requested that the new traffic study include the streets of Washington Blvd., Vernon Road and Fenwick Road in addition to Warrensville Center, Lansdale and Bushnell Roads because motorists cut through surrounding streets. Mr. Morrison requested that the traffic study be performed by a traffic engineering company of the City's choice to be paid for by Waterway. He suggested that the Building Commissioner require a deposit to cover the costs of the traffic study in advance of it being performed (citing CO Section 1420.04).

Luke McConville, 2319 Loyola Road, stated that Waterway has had time to consider the complaints of the residents and he felt that the continuance was a stalling tactic on Waterway's part. He noted that everyone else took time out of their day to come to the meeting prepared and Waterway should have been here also. Mr. McConville requested that the Council proceed with the appeal.

Mary Bondy, 2295 Loyola Road, supported the comments of Mr. McConville. But, if the continuance is granted, she suggested that the traffic study take into consideration the empty stores at University Square and both sides of Cedar Center. Therefore, she requested that the traffic study look at the impact of fully rented properties, the increase in cut through traffic on Vernon, Saybrook, Traymore, and Wrenford Roads.

Ken Iker, 2462 Laurelhurst Drive, stated that Waterway should have been present at this meeting because everyone else took time out to attend. He pointed out that the detailed drawings as requested by the City Engineer were not completed prior to granting the Special Permit. Mr. Fisher stated that preliminary site plan approval was granted by the Planning Commission subject to the plans being presented to the City Engineer. He added that final site plan approval will be before City Council and is subject to submission of the City Engineer's request from November 26, 2007 and the applicant will provide it. Mr. Consolo questioned how any public body, Planning Commission or Board of Zoning Appeals, could grant approval of the project without the documents requested by the City Engineer. Mr. Fisher explained that the requested documents went to site plan approval and not to the Special Permit; therefore, the Board of Zoning Appeals did not need the documents for its approval, and the Planning Commission made its approval subject to final approval by all City departments.

Gretchen Shapiro, 14254 Cedar Rd. (moving to Bushnell Rd.), requested that the environmental impact of the project be considered because several gas stations in the area have folded. Mrs. Shapiro requested that Waterway submit documentation on the impact and abatement of the property to get the property back to a non-toxic state for the neighborhood if the business ceases to operate.

Mr. Bullock asked for a market study and/or an environmental impact study.

Mary Lou McHenry, 2335 Miramar Blvd., stated that Waterway should have been at the meeting. She requested that the Council members listen to the residents and deny the Waterway project because the proposed development will change the land and the city forever.

Mr. Bernardo stated that there is a genuine concern by the residents because their biggest investment is in their homes. He inquired if the City could get a bank to do a study on the value of the homes in the area if the project is approved. Mr. Bernardo stated that he too is concerned and would like to see concrete facts on property values whether it's a reduction or an increase. Mr. Fisher restated Mr. Bernardo's request that an appraisal be performed as to the impact that Waterway has on surrounding residential areas which would be based upon Waterway facilities in other communities that are near residential areas. Mr. Consolo stated that they want to see the impact on property values in University Heights not in St. Louis. Mr. Fisher explained that the only way to do that is to look at comparable sales in the area where Waterway car washes are located. Mr. Bernardo stated that he does not care how it gets done, only that it gets done. He suggested that they could look at property values in the greater Cleveland area when a car wash moved in or was taken out. Mr. Fisher noted that they have to look at sales history in areas where car wash/gasoline stations are adjacent or near residential areas. He added that it could be somewhere in the Northeast Ohio area. Mr. Consolo asked if the City could assume that property values would go down and the burden would be on Waterway to show why that is not true. Mr. Fisher replied that under Section 1262.02 (b)(7) of the Code, Waterway has to show that the use is not likely to be seriously harmful to a residential area. He added that how they satisfy that requirement would be up to them. Mr. Consolo stated that if a continuance is granted then Waterway has to come back and show why it would not be harmful. Mr. Fisher stated that the Council should not prejudge as to whether or not the development would be harmful before hearing the presentation.

Mary Ellen Callanan, 2445 Loyola Road, requested that if the continuance is granted that the traffic study increase the projections in the number of cars that can be washed in an hour.

Mr. Fisher repeated the motion with conditions for an independent traffic study, receipt of detailed plans as requested by the City Engineer, existing site plan to show the locations of adjacent driveways on Lansdale and Bushnell Roads to determine possible impact of the proposed facility on existing residents and businesses. Mr. Fisher noted that underground storage tanks are governed by the Bureau of Underground Storage Tank Regulations (BUSTR) and other state and federal laws; therefore, an environmental study is not needed. Mr. Fisher included the locations of adjacent driveways on Lansdale and Bushnell Roads.

Jack Kluznik, 2308 Loyola Road, requested that Waterway be given a deadline in advance of the April 7th meeting, if the continuance is granted, to present the requested documents to the City in order to allow time for review. Mr. Fisher suggested that the documents be submitted by 4:00 p.m., on March 31, 2008. He added that the documents will be made available to the public on the City's website and at City Hall.

Mr. Samuels stated that he does not know how long it is going to take to get the required reports. Mr. Samuels stated that since an independent traffic study will be done, he suggested that the expert decide which streets should be included in the traffic study.

Scott Rocher, Edgerton Road, stated that the environmental should be done. He also noted that the residents in the audience were not happy with the way the Law Director was capturing what they were taking about. Mr. Fisher stated that he heard the suggestions brought forth and noted that the burden of proof is on Waterway to satisfy the standards. Mr. Fisher added that he does not know how a study could be undertaken on the premise that the gas station is abandoned. Mrs. Gretchen Shapiro asked that a study be undertaken on the assumption that the gas station is operational. Mr. Fisher noted that Waterway had a civil engineer at the February 14, 2008 meeting who was an expert in the petroleum field who testified as to the safety issues.

Mr. Sims agreed that the burden of proof is on Waterway. He noted that the requests as they relate to empty stores affecting the traffic study, environmental issues, economic impact study to realize the impact on housing in the area, all speak to meeting the burden of proof. He added that if Waterway comes back without the proper documents and cannot meet the standards as set forth, then it is up to the Council to decide if the burden of proof has been met.

Mr. Harvey Morrison asked if the Planning Commission recommendation will be considered at this meeting if the continuance is granted. Mr. Fisher replied no because the Planning Commission recommendation cannot be heard until the issue of the Special Permit for the use is resolved.

Mr. Consolo stressed that if the continuance is granted, he and other members of Council expect Waterway to meet their expectations on April 7, 2008 and to come in with the requested documentation.

Shelly Bloomfield, 3893 Lansdale Road, inquired as to why the requested documents have not been required before now and why Waterway was not present at this meeting with their burden of proof. She opposed the continuance. Mr. Fisher explained that this is the first time the matter has been before the Council.

Mr. Bernardo stated that he was appalled that Waterway was not present at this meeting because they presumed the continuance would be granted. Mr. Bernardo stated that the only reason he would vote in favor of the continuance is because it will tell prospective developers as to what will be required in the future and will communicate to the Council members how procedure and policy will be set in the future.

Ms. Goldberg stated that Mr. Bernardo's point was well taken and added that she thinks it is deplorable that Waterway was not at the meeting, especially since it was the first time the matter was before the Council.

Ms. Goldberg stated that she did ask for an independent traffic study when the matter was before the Planning Commission, but she was not a voting member of the Planning Commission that evening nor the Board of Zoning Appeals. Ms. Goldberg added that she, as an elected official, has now requested it at this meeting because she would like everything on the record so that she could make the best decision possible and give an educated vote. Ms. Goldberg stated that she will vote for a continuance this evening, but requested that no other continuances be granted.

Vice Mayor Zucker called for the question. The motion as presented earlier in this meeting was repeated with additional conditions:

MOTION BY MR. MURPHY, SECONDED BY MS. GOLDBERG to grant a continuance for Waterway Gas & Wash Company until April 7, 2008 at 7:30 p.m. (tentative location Kulas Auditorium, John Carroll University) with the following conditions:

- 1. that an independent traffic study be conducted by a traffic engineer selected by the City and paid for by Waterway Gas & Wash Company with impact trip studies on weekdays, Saturday and Sunday which shall include Warrensville Center Road as well as traffic on all surrounding streets;**
- 2. applicant must submit geometric, grading, utility and storm water management plans for a detailed review of the plans (as indicated in City Engineer's letter of November 26, 2007);**
- 3. an existing conditions site plan must be submitted which shall include the locations of adjacent driveways on Lansdale and Bushnell Roads to determine possible impact of the proposed facility on existing residents and businesses;**
- 4. that a market analysis be conducted to show what impact the proposed use of a gas station/car wash would have on the property values in the surrounding residential areas;**
- 5. all requested documentation shall be submitted to the City by 4:00 p.m., Monday, March 31, 2008;**
- 6. that representatives of Waterway Gas & Wash Company must be at the meeting on April 7, 2008 and no further continuances will be granted.**

On roll call, Mr. Bernardo, Ms. Goldberg, Mr. Bullock and Mr. Murphy voted "aye." Mr. Sims, Mrs. Zucker and Mr. Consolo voted "nay." MOTION CARRIED.

B. Planning Commission Recommendation:

- 1. Application of Waterway Gas & Wash Company, 727 Goddard Ave., Chesterfield, MO, to demolish retail strip building located at 2216 Warrensville Center Road and construct a full service car wash, gasoline and convenience store facility with administrative office and training center/conference room on second floor.**

This matter was tabled as a result of the motion for continuance on item "A" of this agenda.

There being no further business to discuss, the meeting was adjourned.

Mayor Beryl E. Rothschild

Nancy E. English, Clerk of Council