

# MINUTES OF A SPECIAL MEETING OF COUNCIL

## CITY OF GARFIELD HEIGHTS, OHIO

Monday, March 18, 2019

**MEETING CALLED TO ORDER AT 6:30 p.m.** by Council President Matthew Burke.

**ROLL CALL:**           **PRESENT:** Council Members LaMalfa, Nenadovich, Glenn, Suster, Burke, Vaughn

**EXCUSED:** Dudley

**ALSO PRESENT:** Mayor Vic Collova  
Building Commissioner Mark Moro  
Rick Turner, Diamond Z Engineering  
Assistant Law Director Kevin Weiler

**PRESIDENT BURKE:** At this time, I would like to make a motion to excuse Clnm Dudley. All in favor signify by saying Yea. Any opposed?

**AYES:** Burke, Vaughn, LaMalfa, Nenadovich, Glenn, Suster

**ABSENT:** Dudley

**PRESIDENT BURKE:** OK. Clnm Dudley is excused. The purpose of this meeting today is to talk about the recent ruling by the Planning and Zoning Board on the True North sign. I think first let me bring up Mr. Turner to have him talk about the sign at True North.

Mr. Rick Turner: Good evening. I am with Diamond Z Engineering. We do site development for True North Energy. True North Energy is a company that is the jobber in this area for the Shell brand of gasoline. They got a partnership with Shell to do the marketing in this area. One of the things they do in their role is they look at sites that they've got control of and consider which sites they ought to be looking at redeveloping. This is a site that they identified to redevelop and as you know, we've gone through the process of getting approval to go ahead with the redevelopment. So this site is on a list of sites that they're giving consideration to and I am in the process of permitting. As permits become available, they go on their construction list and they spend their money as they see fit. Typically, it goes in the order of permits. We were moving right along on this one till we hit this snag on the sign. That's what brought us here tonight. I thank you very much for being here. I feel kind of guilty that we've brought this many people out away from dinner. Can we make it quick and get home in time to eat?

The sign that is on-site now and you've probably seen this. We've got this rendering that we showed to Planning and Zoning. *(Mr. Turner presented a rendering to the Council.)* The sign that is shown here is the existing sign with the exception of the fact that here it shows the diesel price. The existing sign actually has a car wash panel at the bottom of it. So what we are looking

to do is change that car wash panel to a diesel price. The sign would stay the same size as it is now. The only difference would be that the 10 square feet would change from one message to another. With the car wash going away, it's rather imperative to do something with that.

Now in talking to the previous Boards, talking to Mark about the fact that the sign Code has changed in Garfield Heights and Mark, correct me if I'm wrong, I think 2006 was the year that the Code changed.

**BUILDING COMMISSIONER MARK MORO:** Actually, the new sign Code came into effect in 2005 and there was a revision in 2006 to take phase out pole signs. Then it was revised further in 2011 and they added another two years to bring the phase out from five years to seven years. That's where we are.

**MR. RICK TURNER:** All right. 2013. Now this sign that I showed you the rendering of actually looked a little bit different than that in 2013. In 2015, True North got a permit to revise that sign so that it would look like you saw on this picture. So 2015 they made it look like this. Now this project has come along and all we're trying to do is change that bottom panel.

So I and True North are both saying that we don't understand. If we have a permit from 2015, nothing has changed in the Garfield Heights Code since 2015 that would cause us to think that we could not make that one change to this sign. True North is looking to invest \$2 million into this site and looking at that sign certainly that's not a big percentage of \$2 million, but they're looking and saying they're competing against other companies that have signs of that size right across the street. There's another one down the street on the corner of Granger and Turney. They would like to be able to keep the sign that they have. They asked me to come plead the case here for making what we consider a reasonable move to our existing sign as opposed to the Zoning Code or a request for a variance cause you to have to say it would be unreasonable or extraordinary to have to make this change. So we just want to ask for some consideration in doing this.

**CLMN SUSTER:** Mr. Chairman.

**PRESIDENT BURKE:** Mr. Suster.

**CLMN SUSTER:** I'm going to ask this question of Mark. Mark, how long is a building permit good for?

**BUILDING COMMISSIONER MARK MORO:** One year.

**CLMN SUSTER:** One year? So then the building permit that they requested in 2015 is no longer any good?

**BUILDING COMMISSIONER MARK MORO:** It's no longer valid. Correct.

**CLMN SUSTER:** OK.

**PRESIDENT BURKE:** Does anyone else have any questions? Mr. LaMalfa.

**CLMN LAMALFA:** I'm very disappointed in the Planning Commission. They are investing a large amount of money in the city and we don't have a whole lot to offer businesses because we are a poor community and we got to tighten our belts wherever we can. We can't offer lower

taxes or anything like that. So little things like this. Not that you are asking to replace a shut off switch or a sprinkler system. You're asking for something small. I'm very disappointed the Planning Commission did not just use common sense and allow you to do this. I'm very upset about that. Unfortunately they are using what the ordinance says and they're going to say well we made Arby's do it, we made other people do it, but in this particular case where your sign is and how it looks and everything I think they should just overlook it. I agree with you. It's a small thing outside. I'm very upset about that. I don't know how they're going to vote on it. Thank you.

**PRESIDENT BURKE:** Mr. Nenadovich.

**CLMN NENADOVICH:** Yes. I know you mentioned in the meeting we had with Planning in the Caucus Room the last time we met. It's not much of a cost difference but there is a cost difference. It's going to be a little more expensive to put the other sign up. Also, I understand the Building Commissioner's position that he has to adhere to the Code. If you are going to make a change, you have to go to the newer style sign. But I'm looking at it this way. You're not moving signs, right?

**MR. RICK TURNER:** Right.

**CLMN NENADOVICH:** You're putting up the same sized panel?

**MR. RICK TURNER:** Correct.

**CLMN NENADOVICH:** You're not going to be obstructing the view? Right? Everything's going to remain the same. In fact, the sign--probably the only thing you're going to do is paint it to make it comply. I believe that a pole sign is less of an obstruction and they want a monument sign, which completely blocks the view. In this instance, I feel that I see nothing wrong with granting it due to the fact that they sent it to us to make the decision because they didn't want to.

If we make the decision in favor of the business, this is a one-time shot. I do believe that we should go and review this ordinance to make it more complicit to businesses, more conducive to having businesses here. I think we ought to, after this, after we vote on what we do tonight, revisit this ordinance so that we're not putting the Building Commissioner on the spot and we're making it more acceptable for businesses in this city. It's a beautiful sign. It's brand new. Why would I have to change it? Cutting it down and making it smaller? I'm going to obstruct our view of traffic. So that's what I have to say, Matt. Thank you.

**PRESIDENT BURKE:** Mr. Vaughn.

**CLMN VAUGHN:** First of all, Mr. LaMalfa, this was Zoning- not Planning. This ordinance we have made other people do it. We've had Arby's conform; we've had McDonald's conform. It's on our books. Your company also has done it in Independence, in Brecksville, in Broadview Heights and in Macedonia. If it's good for these communities, I don't understand why it's not good for Garfield Heights. This is a total rebuild. This is less than half a percent of the budget. I really think that because it's on our books and because we've had other businesses that have remodeled totally or built, we've made them come up to Code and I think True North should have to do the same.

**PRESIDENT BURKE:** I have a question for Mark Moro. Mark, according to what I've heard here, 2011 was the last time you said that this ordinance was revised, correct?

**BUILDING COMMISSIONER MARK MORO:** Correct.

**PRESIDENT BURKE:** Would that mean that in 2011 they would have had to change the sign to conform with the Code?

**BUILDING COMMISSIONER MARK MORO:** Yes. The ordinance says that pole signs are not acceptable and all businesses were given a five-year transition period to remove the pole signs and construct an approved sign by November 30, 2011 and at that time it was extended for another two years to 2015. The fact that they are doing a remodeling or making changes is the pole sign should have been gone already. Because they are not, I am asking that when something is done with the property or the sign that it be brought into compliance rather than just notify everybody in the city that they have to change their signs.

**PRESIDENT BURKE:** But in 2013 is when that expired. Yet in 2015 when they pulled the permit, we did not make them change the sign then.

**BUILDING COMMISSIONER MARK MORO:** That's correct.

**PRESIDENT BURKE:** I know that you were not here of record.

**BUILDING COMMISSIONER MARK MORO:** I was not here of record but he is correct.

**PRESIDENT BURKE:** The Building Department did not tell him he had to change the sign at that point in time.

**BUILDING COMMISSIONER MARK MORO:** Apparently not.

**PRESIDENT BURKE:** So why are we making him change the sign now?

**BUILDING COMMISSIONER MARK MORO:** Because it's still the law.

**PRESIDENT BURKE:** Is it to comply with the ordinance?

**BUILDING COMMISSIONER MARK MORO:** Yes.

**PRESIDENT BURKE:** OK. Mr. Glenn.

**CLMN GLENN:** First of all the view of the traffic is paramount. I believe Mark was not in office in the previous Building Department administration when this was passed?

**BUILDING COMMISSIONER MARK MORO:** Yes. It was modified in 2006. They put the transition period. I have not been able to locate that actual ordinance. I found the ordinance previous. I found the ordinance after, but I can't locate the ordinance of 2006 that brought the transition period.

**CLMN GLENN:** OK. Is there a new one? It's standing right on the corner there. In compliance with our Code and our laws. It's a large sign too. They got shrubbery there. I am thinking strictly about safety. If we change the law, some people already changed the signs. Now they have an argument. The Mayor is very conscious about lawsuits. My thing is safety first. Right now as it stands, the ordinance is an ordinance. Thank you.

**PRESIDENT BURKE:** Mr. Weiler, do you have anything you'd like to add?

**ASSISTANT LAW DIRECTOR KEVIN WEILER:** Well, I think pretty much what's been said is correct. I just have a couple legal points, you know, for the record. Section 11.33 is the section that does not approve pole signs in any zoning district. So for the record, I'm really just kind of repeating what Mark said. I thought I'd give you the detail on it.

Section 1141.10 of the Codified Ordinances Sub-Section D says Sub-Section A says no nonconforming sign should be modified, relocated or changed in any manner whatsoever unless the entire sign shall be brought in compliance with all the provisions of this chapter and all other applicable city laws and ordinances. So that's a section that requires that if you give a non-conforming sign, you got to bring it into conformance, which would be if you have a pole sign, you'd have to get rid of the pole sign and turn it into another sign that would be otherwise approved under the Codified Ordinances. These two concepts get mixed up. Under Sub-Section D there is a transition period, OK, where originally, it was 2011. Is that right, Mark?

**BUILDING COMMISSIONER MARK MORO:** Originally, it was five years.

**ASSISTANT LAW DIRECTOR KEVIN WEILER:** Five years. Yes and then they amended the ordinance on February 14, 2011 and put it up to seven years but in any event that section is relied on. You know the sign is not in conformity. Here's where I'm guessing and I don't know if guessing is very helpful for everybody, but I'm guessing in 2015 that the company applied for what's known as a change of fascia, which is really what's kind of happening right now. It's the idea that they're not really changing any structural components of the sign but that they're asking that the fascia be changed to convey a different message. But for the fact that we have Section 1140.10, no non-conforming sign shall be relocated or changed in any manner unless the sign be brought into compliance, you know, change of fascia would work, but it does not.

So strictly from a legal standpoint, unless this Board decides that there is an unnecessary hardship in this case, in contravention to the Board of Zoning Appeals, and that's the test that you have to ask yourself. The Board of Zoning Appeals has already said in a 4-1 vote that they did not feel that there was an unnecessary hardship in this particular case. If the Council were to overrule it, which they have the authority in the Charter by a vote of five Members of the Council. It's a supermajority. Five Members have to approve it. The only really legal basis they could do it on is that they disagree with the Board of Zoning Appeals and that it is an unnecessary hardship under all the circumstances.

Now all the issues about what you discussed, etc. I think you know are all good points and fine. I think one issue that you discussed was the issue of the safety. I think that if there is a question about that, it probably should be referred to the Engineer because an Engineer normally will determine lines of sight as far as safety issues are concerned. So if that's a concern, then it probably should be referred to the Engineer to take a look at that.

All the rest of it is well within your discretion to overrule the Board of Zoning Appeals, but the basis would be. The test I think you have to ask yourself is do we think this is an unnecessary hardship or the Board of Zoning Appeals did not think it was an unnecessary hardship? I might add the key thing is %unnecessary+because that is how the Board of Zoning Appeals operates. Everything's a hardship. Anytime you have to do something to change your plan it's a hardship, but the question is, is it necessary? Do you sort of have a balance? On the one part of the

balance, you have the good of the community and the other part you've got the appeal by the applicant.

**PRESIDENT BURKE:** Mayor, did you want to add anything?

**MAYOR VIC COLLOVA:** I would just add this. The way I'm looking at this. First of all, they have a company that's coming in, putting in \$2 million in the city of Garfield Heights. We love them for that. There's no doubt we all want to see that. The reality of it is the Zoning Board along with the Planning Commission felt the same way. We knew there was an ordinance in place that wanted to have a monument sign. So I think this is a very difficult decision to make on the spur of the moment. My suggestion would be that we call a committee or Council session of some sort. Kevin, if you would say which is the best way to go? I think this should be discussed at further length. I think there is a lot more to it.

**PRESIDENT BURKE:** I agree with you. And also because Clmn Dudley is not here today, but somebody's going to have to make a motion.

**CLMN VAUGHN:** I make that motion.

**ASSISTANT LAW DIRECTOR KEVIN WEILER:** The motion would be to table the issue, but there has been a hearing so the requirement for a hearing was met.

**MR. RICK TURNER:** In closing, I have two/three points. One you referred to a couple of signs that are nearby. The one in Independence was a monument sign and has been a monument sign for twenty-some years. That was rebuilt last year. It remained a monument sign and the same size. The one at Brecksville was a small sign on a single pole that was up over the city sidewalk. So they wanted to do something there. They had to eliminate that sign. I'm not familiar with the other two.

**CLMN VAUGHN:** I'm just saying if it can be done in those cities why can't it be done in our city?

**MR. RICK TURNER:** I'm going to say the only reason is we have a sign that's already there and it's 88 square feet and 75 of that square feet has already been re-imaged to how they want it to look. The remaining 10 square feet was not done because they did not have diesel at the site.

**CLMN NENADOVICH:** This question's for you, Mr. Weiler. If the chance that we do override the Zoning Commission, are we subjecting ourselves to any lawsuits by the company? Can they force the law?

**ASSISTANT LAW DIRECTOR KEVIN WEILER:** The underlying issue there is the Constitutional issue of equal protection. OK? That gets kind of complicated but basically what it is, is that you have to look at the individual cases and determine whether there is a reasonable difference between the facts of the case. Discretion could be utilized. I wouldn't know that in the original ordinance here it talks about the possibility of getting a variance for a non-conforming sign so it's not like the people who forged this didn't see that there could be a necessity for having a variance.

Like for example, I'd try to answer your question. If McDonald's came back or Arby's came back and said, "What the heck! You made us spend all this money for a ground sign when we already had a pole sign. We are not being treated fairly. You've abused your power. You've

violated our civil rights, etc. If that it probably would go down to the heart of what are the facts underlying the case. I don't know enough about this case. I don't make the decision for the Council. I don't know enough about the case, but I do know enough about it to say it's a possibility. I don't know that it's a real big possibility at this point.

The other thing is, not to get you off the issue in this particular case, but these amortization ordinances, which were popular at the time in 2011 and still are to some extent, the thing about it is every town runs against the same thing. They all say OK. Get rid of pole signs. You can amortize it over a certain number of years, but then you've got to go in and tell everybody that's got a pole sign to take it down. Then what happens is that day comes and whoever the political leaders are are %Whoa! This is trouble politically. This is a lot of trouble. That's where you probably get the extension. I wasn't here at the time but I wasn't privy to what they were doing. I will bet that that's why that thing was passed for another two years and did extend the amortization period. If you really look at these things realistically, at some point if you're going to say you want them out of the town, etc. then there has to be the conviction that you're going to stand behind the Building Commissioner when he goes out and starts citing to take down a pole sign that doesn't conform.

Just if I could, Mr. Chairman, I think the best way to go about this is to have somebody make a motion to either overrule the Board of Zoning Appeals or affirm the Board of Zoning Appeals. Put that on. Then after a motion to table it. OK? To table it for further discussion. If that's what the will of the Council is?

**PRESIDENT BURKE:** Mr. Nenadovich.

**CLMN NENADOVICH:** How will this inconvenience you delaying this for a while?

**MR. RICK TURNER:** True North likes to have the permits in a row before they proceed with a project. So I think they got a little bit of consternation by the fact that we had to come to this meeting. So I can't tell them permits are all ready. Go ahead. Do your project. So there is some holdup there.

**CLMN NENADOVICH:** Thank you.

**CLMN GLENN:** Mr. Chairman.

**PRESIDENT BURKE:** Mr. Glenn.

**CLMN GLENN:** We've got these large signs off of 480. They're basically pole signs.

**ASSISTANT LAW DIRECTOR KEVIN WEILER:** Billboards. They call them monopoles.

**CLMN GLENN:** OK. Does that fall in the same classification?

**ASSISTANT LAW DIRECTOR KEVIN WEILER:** Billboards have a different definition.

**CLMN GLENN:** OK. Thank you for that information. Also, Mr. Chairman, I think this would be appropriate to have a Building Committee Meeting?

**PRESIDENT BURKE:** I would agree with you there, Gene. Clmn Vaughn has a motion on the floor to table this and talk about it in a committee meeting which would be your committee meeting.

**MAYOR VIC COLLOVA:** Kevin.

**ASSISTANT LAW DIRECTOR KEVIN WEILER:** As a procedure, if you want to table this, this is what I do. First of all, I withdraw my motion to table and then have somebody make a motion either to affirm or deny the appeal, which is what this is, from the Board of Zoning Appeals. Once that's seconded, then make a motion to table that. Because then you will have something on the table that you can take action. It's a technical thing.

**CLMN VAUGHN:** I withdraw my motion. I recommend that we deny at this time.

**PRESIDENT BURKE:** Does anybody want to make a motion on. Mr. Suster.

**CLMN SUSTER:** I second that.

**PRESIDENT BURKE:** OK.

**ASSISTANT LAW DIRECTOR KEVIN WEILER:** Now if you want to table it.

**CLMN VAUGHN:** OK. At this time, I would like to table it so that we could go to the Building Department for further discussion.

**CLMN NENADOVICH:** Point of order. There is a motion on the floor. It was not voted on.

**CLMN VAUGHN:** I'm following the Law Director.

**ASSISTANT LAW DIRECTOR KEVIN WEILER:** Point of order. If you have a motion on the floor on the substance of the issue, a motion to table is in order. So what's happened so far is that a motion has been made to deny and seconded by Clmn Suster to deny the request of the applicant. There has been a second to that so that's set up.

**CLMN VAUGHN:** We now look to the Building Committee.

**ASSISTANT LAW DIRECTOR KEVIN WEILER:** Yes, the point is that I tabled it for the Council and the Council Chair can refer it to the Building Department, as is the custom to do that.

**CLMN VAUGHN:** Right. I understand how that goes.

**ASSISTANT LAW DIRECTOR KEVIN WEILER:** There is still a motion to table.

**PRESIDENT BURKE:** Mr. Vaughn made a motion to table. Did anybody second?

**CLMN SUSTER:** I second.

**PRESIDENT BURKE:** It is seconded by Clmn Suster. So for the record, there has been a motion made to deny the sign. Seconded by Clmn Suster. Then a subsequent motion made to table this hearing and also seconded by Clmn Suster. Will you take a roll call vote on this, Barb, please?

**CLMN LAMALFA:** Before I vote, I've got to ask a question. Tom, do you sit on the Zoning Board? You're voting on what you decided.

**CLMN VAUGHN:** No. I do not sit on Zoning. I'm on Planning.

**CLMN LAMALFA:** You're on Planning. You had nothing to do with this?

**CLMN VAUGHN:** We gave them permission to go forward.

**CLMN LAMALFA:** I vote No.

**CLMN NENADOVICH:** Before I vote, there's two motions on the table. Which one am I voting on?

**ASSISTANT LAW DIRECTOR KEVIN WEILER:** A motion has been made and seconded to deny a permit to the applicant. However, now, since that's out there, OK, it is off the table and up for discussion. A motion has been made to table it to a further meeting so as to have the opportunity to refer it to the Building Committee or whatever the Chair decides that they're going to do with it. That's what you're voting on. You're not voting on the court motion. You're voting on the motion to table. It's Parliamentary Procedure.

**CLMN NENADOVICH:** No.

**PRESIDENT BURKE:** Michael Nenadovich voted No. I'm sorry Gene; you cannot ask a question at this point until your name is called.

**CLMN GLENN:** Question. The vote No is to say it's OK to vote Yes?

**ASSISTANT LAW DIRECTOR KEVIN WEILER:** A vote Yes is to table it. A vote No is to not table it.

**CLMN GLENN:** If I vote Yes to table it, we will have a Building Committee to talk more about it and at a later date we can come back here and vote on it?

**ASSISTANT LAW DIRECTOR KEVIN WEILER:** Right.

**CLMN GLENN:** Saying that, I vote Yes.

**CLMN SUSTER:** Yes.

**PRESIDENT BURKE:** Yes.

**CLMN VAUGHN:** Yes.

**PRESIDENT BURKE:** OK. Being that the vote is 4 Yes to 2 No we will have another hearing on this. Mr. Turner, I thank you for your time. I will be in touch with you on what's going to happen. Thank you very much.

**CLMN VAUGHN:** I'd like to make a motion that we adjourn the meeting at this time.

**PRESIDENT BURKE:** On the motion made by Clmn Vaughn to adjourn tonight's meeting, all those in favor signify by saying Yea. Any opposed?

AYES: Vaughn, LaMalfa, Nenadovich, Glenn, Suster, Burke

ABSENT: Dudley

Meeting is adjourned.

**MEETING ADJOURNED AT 7:03 p.m.**

**APPROVED:**

**RESPECTFULLY SUBMITTED:**

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Matthew Burke  
President of Council

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Barbara Molin  
Clerk of Council