

Cuyahoga Falls City Council
Minutes of the Public Affairs Committee Meeting
October 21, 2013

Members: Jerry James, Chair
Paul Colavecchio
Vic Pallotta

Mr. James called the meeting to order at 6:35 p.m. All members were present.

Legislation Discussed:

Temp. Ord. B-72

Discussion

Temp. Ord. B-72

An ordinance approving the application of Portage Crossing, LLC for the designation of a Community Entertainment District at the Portage Crossing Redevelopment Site, making certain findings in connection therewith, and declaring an emergency.

Mrs. Snyder stated she will be asking to be excused from voting as she believed she had a conflict. She will also not be participating in discussions of this legislation.

Mr. Pallotta moved to excuse Mrs. Snyder from further discussion and from voting on this legislation next week, second by Mr. Colavecchio. Motion passed (3-0).

Mrs. Truby stated that Council tabled this ordinance allowing time for additional questions. She had received questions from Ms. Nichols-Rhodes. She forwarded the questions along with the answers from Mr. Rubin to all of Council. She also spoke with Jim Hummel regarding the value of licenses. Licenses within this district are not transferrable outside the district.

Tom Fitzsimmons, General Counsel for Stark Enterprises, stated there were concerns and questions regarding the entertainment district. He brought along Stark's outside counsel to help answer questions that were specific to liquor licenses. Mr. Colavecchio stated that one of the concerns they had when this ordinance was tabled was whether this was going to hurt the value of liquor licenses of owners who have been here for many years and who paid a substantial fee for their license. He asked for an explanation of how this will work and if it is transferrable, and if it could have a negative impact on the value of liquor licenses of existing owners.

David Raybor stated it will not impact existing owners. The General Assembly relaxed a statute in 2012, so if there is an individual who wanted to sell or transfer his license but could not find a buyer in his or her city, the law now allows that seller to transfer the license to a buyer anywhere in the state of Ohio as long as there are no licenses available in that buyer's area. He also added that a "C" license does not have the same value as a "D" license. In a Community Entertainment District ("CED"), the licenses are D-5-J which can serve until 2:30 a.m. There is one D-5-J per five acres within a CED not to exceed 15 licenses. This is a wonderful instrument for jobs and progress in the community. It will bring businesses who would not otherwise want to come without being assured of getting a liquor license. Also, permits issued inside the CED cannot be transferred outside. If a business went out of business and a bar came in, the bar could take the license if it qualified. Mr. Fitzsimmons stated there is a great demand for transfers within the state, which makes permits more marketable. Mr. Colavecchio asked whether Mr. Raybor has seen some of these licenses being transferred into other places in the state. Mr. Raybor indicated he has and pointed out he was

here last December on behalf of Giant Eagle, Being able to search statewide allowed Giant Eagle to conduct tastings it would not otherwise have been allowed to do.

Mrs. Klinger asked whether any of the establishments would be doing entertainment and charging admission like Tangier's does. Mrs. Truby stated to her knowledge, the movie theater is the only business charging an admission. The goal is they do not want fast food but rather to open it up to a sit-down establishment that serves alcohol. There is nothing in line to charge admissions. Mr. Fitzsimmons agreed. Mrs. Klinger asked if this was a liquor license only and whether there were any special requirements in getting a license revoked. Currently, Council has the ability to request a hearing if there are issues at a particular establishment. Mr. Raybor stated with a D-5-J application, Council has a right to object. If a permit is issued and that business is not operating in compliance of the law, Council can object and there would be a hearing. Local control remains. Mrs. Klinger asked if the area is expanded and the City wanted to also expand the entertainment district, was that possible. Mr. Raybor stated there are 43 CEDs in Ohio and there is not a problem with any of them. Easton made a second CED to allow for more development, however, he would have to check the statute. Mrs. Klinger appreciated that because developments tend to change in character. Mr. Raybor added if a community would start to deteriorate, then the case law on a rejection would support denying a new permit based on deterioration.

Mr. Walters asked if the CED would have to be within Portage Crossings or could an outlot be repurposed. Mrs. Truby stated the request came from Stark Enterprises so it is just for their property. She does not see any reason to go outside of that. An owner would have to come to the City to request it. Mr. Fitzsimmons stated the application is driven by the property owner. It is a single owner of an entire property if there is one CED. Mr. Walters stated that precincts have direct votes on being dry or not and asked for confirmation that there is no public input on these CEDs other than Council. Mr. Raybor stated it would go through the process within the statute.

Ms. Nichols-Rhodes asked if there were plans for further development in Cuyahoga Falls as far as is known. Mrs. Truby stated that down the road, they would like to look at the downtown area as a CED. In the past two years, there were businesses who wanted to open but were having trouble getting liquor licenses. Ms. Nichols-Rhodes asked if there was any legal limit. Mr. Raybor stated the maximum number in a CED is 15. Ms. Nichols-Rhodes stated it would be 15 for 75 acres and asked if the property had to be contiguous. Mr. Raybor stated they would need to form a new CED which would open it up for additional licenses.

James Hummel, 2551 Berk Street, stated he has owned and operated the Silver Swan for 30 years. As a business owner and resident, he is asking Council to consider the negative impact this will have on the City. The traditional manner is to go out and buy a license, which usually ends up shutting down a low-producing business. It is a self-cleansing process in the industry. This proposed legislation will keep that from happening and will also decrease the value of existing licenses. There are currently 50 licenses in Cuyahoga Falls and he feels that is enough. Adding four new licenses affects the supply and demand of these permits. He stated that no matter how Council votes, he appreciated the opportunity to speak this evening. Mr. Raybor stated there is not a finite precinct anymore. If Mr. Hummel sold his business today, Mr. Raybor stated he could find a sale for Mr. Hummel's license and it would be sold and transferred. Mr. Hummel stated the value of his license has dropped. When Howe Road was developed, those businesses had to go out and buy licenses for their businesses. This forced the underachieving businesses out and increased the value of everyone else's liquor licenses. Mr. Raybor stated a business would need an endorsement from the local authority but in the ones he has done, there was never a problem. Mr. James asked what the procedure was if someone from another county wanted to open a bar here. Mr. Raybor stated that individual would contact him and tell him what class license he wants and then Mr. Raybor would go out and find him one. He would then go to the entity and explain the procedure. It generally just takes him explaining to the local authority what the procedure is and if they want the business, they will prepare the letter and approve it.

Mayor Robart asked whether Mr. Hummel was speaking for or against the legislation. Mr. Hummel stated he is speaking against it because this project is not following the normal procedure of buying licenses from businesses located in the City. Four new liquor permits are being created where demographics do not support the 50 already in the City. Mr. Truby stated that the underachieving businesses do not have to sell. Before the State Road shopping center was torn down, there were already four licenses there. She pointed out that this legislation is also for Stark Enterprises to go after a full, sit down establishment serving alcohol.

Mr. Fitzsimmons stated there are certain obligations to lease a certain amount of square footage. Part of this is to attract businesses that might not otherwise want to come. This is critical to attract the types of tenants and will also bring jobs. These districts are done for economic purposes. It is critical to leasing activities to have this as a tool. Mr. Colavecchio understood this was important to Portage Crossing, but if it is decreasing the value of other owners' licenses, he asked if the City would be setting itself up for a lawsuit. Mr. Fitzsimmons said it would not. There is a driving market for these licenses in the state of Ohio. A business would have to show it could not sell its license anywhere in the state. Mr. Colavecchio stated it is one thing to sell the license but another to sell it at the value it had. Mr. Raybor added that the City cannot be sued. A liquor permit has no property right. It is a privilege. He pointed out that permits lost value after the 2008 meltdown.

Mrs. Klinger stated these licenses are restricted so their value is limited vs. a license that can be transferred to anywhere in Ohio. They are not comparable. Mrs. Pyke added that Portage Crossing is the only place these licenses can operate. We are technically only diluting the value in Portage Crossing.

Donna Dablor was concerned about the school and parish being next door and wondered if there was a variance or ordinance restricting how close an alcohol establishment can be to the school. Mr. Raybor stated that schools and certain church institutions located within 500 feet have an opportunity to object to a new license, just like the City does. If an objection is filed, the Division of Liquor Control will hold a hearing. Mr. Fitzsimmons stated they are requesting four licenses. One would be for Aladdin's but the others have not yet been assigned. Ms. Dablor asked if a business goes out of business and sells its license, would it be cheaper for the next owner. Mr. Fitzsimmons stated if it is within the district, it would be. Ms. Dablor asked Mr. Hummel if that was what he was talking about. Mr. Hummel stated he was talking about taking a license from an underachieving tavern and spending it on a larger, more established business. He feels the number of licenses should be kept at 50 and future licenses be taken from the bottom to put at the top. If we do a CED, we will not have the natural cleansing of liquor licenses. Mayor Robart stated this discussion misses the point. The question is do we want to grow the community, make it better and provide more opportunities to residents for eating and entertainment.

Greg Snyder asked if this were to be voted down, what is the next step. Mr. Raybor stated some leases are pending on the liquor license. Tenants cannot absorb costs. Mr. Snyder stated everyone has been very generous with everything moving forward. This is an eleventh hour deal. This was not an issue on the front end. Mrs. Truby stated this is another piece to grow the establishment. The difference for the development is do we want four Burger Kings or a Macaroni Grille. Mr. Snyder asked why this wasn't discussed three or four months ago. Mrs. Truby stated there will be many things to discuss in the future. This is a \$60 million development in the City and is the largest one. The City will continue to grow it. The City is beginning to receive interest from businesses around the property. This is what we want. We want this project to spur off more development.

Robert Gallagher, 2689 Timbertop Trail, supports the project. He is aware of Stark Enterprises' work. If the City already has 50 licenses and this project adds four for a total of 54, and then the project expands even more, he asked whether there could then be 60 liquor licenses under this ordinance. Mr. Fitzsimmons stated it would require a change to the CED. Mr. Gallagher stated his children go to IHM. He was concerned about them walking home from school and the number of people in the area who would be under the influence of alcohol. Mr. Fitzsimmons stated the businesses would be full-service restaurants, not a bar.

These are not seedy establishments. Stark invests a lot of time and money and they manage the properties they develop. Safety and the impact on a community are things they take very seriously. Mrs. Truby stated they will address issues relating to expansion as they arise. She added that she could not see children walking home from IHM to Timbertop Trail. Mr. Raybor added that every one of these permits has a hearing process so if there is a problem, Council has the ability on behalf of the citizens to object. Mr. Gallagher stated the City once intended to open up a pedestrian path at Bath Creek. Mrs. Truby stated they talked about adding on to make it walkable from High Hamptons down to Bath Road to State Road.

Mrs. Klinger stated that every liquor license is up for review. If there are problems, Council can take action. These fall under the same parameters as a regular liquor license so if there are any issues, there is action Council can take for those situations.

Ms. Nichols-Rhodes thanked Council for its vote to table this for further discussion. It is very important to listen to how things are going to affect residents. Mr. James thanked Mr. Fitzsimmons and Mr. Raybor for attending.

Mr. Pallotta moved to bring out Temp. Ord. No. B-72 with a favorable recommendation, second by Mr. Colavecchio. Motion passed (3-0).

Miscellaneous Business

Susan Abramson, 57 Cochran Road, stated 30 years ago, property on Cochran Road was rezoned as enterprise. In November, 2012, her mother passed away. She and her brother put the property on the market to sell, which it did. However, within five days of closing, the realtor stated that Cuyahoga Falls indicated the property could not be sold because it was not improved. She and her brother did not know what that meant because they were not allowed to make improvements. She talked to Mr. Guerra, Mr. Colavecchio and Mayor Robart. All have said they would get back to her with some resolution. She and her brother need to know what they can do to have this property sold. They are paying taxes on empty property. Interested buyers go away because it is not sellable. She wanted to know what needed to be done to make this property sellable.

Mrs. Truby stated that Mr. Guerra works in her department and that they could all talk more. The property is zoned industrial. They are working on industrial users who have a better need for the property. A meeting is in the process of being set up. They would be glad to help her with that sale. Ms. Abramson stated they have been contacted by the companies in the area but they want to know when the improvements are going forward. She and her brother were going to sell a home and then they were told they could not. Everyone has been helpful but they do not yet have an answer. Mrs. Truby stated they could sit and talk within the next week. She stated Ms. Abramson would be notified of the meeting.

The meeting adjourned at 8:00 p.m.