

PLANNING COMMISSION MINUTES OF November 10, 2021
6:00 PM Council Chambers
745 Center Street, Milford, OH 45150

The Planning Commission of the City of Milford met in regular session on the evening of Wednesday, November 10, 2021, at Council Chambers, 745 Center Street, Milford, OH 45150.

Roll Call: Mr. Brumleve called the Planning Commission meeting to order at 6:00 PM. Other members present at tonight's meeting are Brad Price, John Wenstrup, and Lisa Evans.

Staff: Ms. Holbrook, Asst. City Manager; Tim Casto, City Engineer

Visitors: Chris McBroom, 729 Garfield; Amy Brumleve, 912 Forest Ave.; Stan Messerly, Messco Eng.; Patricia Gorman, 24 Wallace Grove; Bill Loch, 15 Wallace Grove

Ms. Evans made a motion to excuse Ms. McKnight. Mr. Wenstrup seconded the motion. All voted yes.

Mr. Brumleve: We appreciate everybody being here this evening. We will hear first from staff, and then the applicant will have an opportunity to explain the request and answer any questions posed by a member of the Planning Commission. We will then open the floor to audience members who would like to comment or ask questions about the case.

SITE 21-13 Roads Rivers Trails, 118-120 Main, Major Building Improvement.

Ms. Holbrook read the Staff Report into the record:

Project: Roads Rivers and Trail Major Building Improvements

Location: 118-120 Main Street

Applicant/Property White Wolf LLC

Owner: 118 Main St.
Milford, OH 45150

Acreage: 0.176 Acres

Tax Parcel Id: 210709.021D

Zoning: MRD, Milford River District

Existing Use: Retail

Proposed Use: Retail

ADJACENT LAND USE AND ZONING

Adjacent property to the north, south, and west is zoned MRD. Property to the east is zoned R-3, Single-Family Residential District.

Major Building Improvement

The applicants propose to add a 4,500 square foot retail space with a 1,350 square foot patio over the existing 5,500 square foot retail space. The current structure will be reinforced, and the proposed structure will have its own ingress/egress to High Street. This improvement would move all on-street loading, installation, and deliveries of canoes and kayaks off Main Street and onto High Street.

The final building height after the expansion is 35 feet, 8 inches which is well within the maximum allowable height of 45 feet in the Milford River District. The patio is recessed 25 feet from the front face of the building. The High Street entrance would include a garage door and mural on the rear wall. Building materials include wood shiplap siding, decorative CMU, and brick.

The applicant is working with the City Engineer and staff to determine stormwater management. The major building improvement is compatible and in keeping with the character of downtown Milford.

STAFF RECOMMENDATION

Staff recommends approval of the Major Building Improvement request with the following conditions:

1. City approval is contingent on review and approval by the City Engineer and any other applicable local, state, and federal agencies.
2. The lighting added to the High Street building face should not shine on adjacent properties.

Mr. Wenstrup: High Street is a residential street. How much capacity does that street have for trucks bringing in kayaks and equipment, unloading and loading? And the second thing is, I'd like to make sure that the homeowner has a chance to voice their concerns if you decide to put a mural on the back of the building.

Ms. Holbrook: High Street handles residential and commercial traffic.

Mr. Wenstrup: There's room for parking on both sides of the street. It gets narrow behind your building, and I'm concerned about the infrastructure. Having a truck parked there might dissuade people from cutting through, but we want to maintain a residential character on one side of the street and a commercial on the other.

Ms. Evans: The fire department had questions about the egress?

Ms. Holbrook: Yes, staff met several times with the applicants. The Fire department was satisfied with the most recent plans.

Mr. White: Joe White. I live at 845 Walnut Street here in Milford. And I'm part owner of RRT at 118-120 Main Street. On Hometown Holidays, we'll be celebrating 11 years of being open. We are adding a structure above our building that extends to High Street with a patio on the front section of Main Street. In our existing first-floor structure, all these red arrows point to the new steel uprights that will go through the roof of our building. We will have new foundations that won't be tied to our existing building and a handicap elevator.

We currently have a rear exit that we're going to continue to have, but we're also going to add an interior staircase to the upstairs so that you can egress through to High Street. The steel uprights will go through the roof, and they will tie into the network of steel

beams that will create our second floor and support our roof. Our existing structure is completely overbuilt and underneath the new building.

From the back of the building to High Street, you're looking at a 20-foot retaining wall that's quite aged. That's our current fire exit to High Street, which will be below the surface. In between that failing wall and our existing building, we're adding a wall that will support the back end of the building and the front of the parking lot. We do hundreds of kayak rack installs and loading of kayaks. We sold over 400 kayaks last year. Any of my employees or customers could get sideswiped. That is why I want to invest the money in the property, which keeps me awake at night.

We'll have an additional four parking spaces on top. A ramp spot will also double as a loading dock, with a retail entrance. We added an employee entrance stairwell on the left-hand side to the first floor. We can discuss the mural once we get through the construction. We want everybody to be happy with it.

Mr. White: This is the front elevation. The color of the wood siding on the patio will probably be something closer to what CoHatch put in on the front of their building. We'll continue the limestone up the columns with matched brick on the front and under our windows. The other benefit is getting rid of all the old wiring in the building. And then when we separate our water and stormwater lines, that should be over 200,000 gallons annually that will come out of our sanitary lines into stormwater. We'll see the underside of the metal decking of the structure. It's going to be a very open floor plan for retail displays. Upstairs, we will have paddle sports and car racks. And then that will allow the downstairs to open up more and be friendlier for people to shop. Any questions for me?

Ms. Evans: It's going to be a significant improvement to High Street.

Mr. Brumleve: The facade face that's directly on the sidewalk, is that expanded upwards?

Mr. White: When you're standing at the street and looking at my current building, you'll see an additional 6 feet of wall. But when you're standing on the patio up top, it'd be at 42.

Mr. Brumleve: Right. I'm just trying to recall what is above the awnings right now. Is it limestone?

Mr. White: It is limestone.

Mr. Brumleve: Structurally, it's quite cunning. You're building a second building entirely that just so happens to have its legs down through the existing.

Mr. Wenstrup: The patio on the second level, what is the proposed use for that?

Mr. White: If I have a high influx of inventory for kayaks, I can put kayaks outside, but it will also be used for presentations, education, first aid classes, and stuff like that.

Mr. Wenstrup: And I'm assuming that space can hold enough people?

Mr. White: Yes. Schaefer Engineering is our structural engineer. We upgraded all floors to be a hundred pounds per square foot, above and beyond a parking garage which is about 20 or 40 pounds per square foot. We will be removing the parallel parking spots directly in front of our space. The street will feel wider in front of our building. We did 25 feet back. So, when cars are parking in our lot, they're not going to be on the sidewalk. Once you get past our building, it'll bottleneck. And it's supposed to be one way at the next intersection anyway.

Ms. Holbrook: Joe, when you install the canoe and kayak racks, are you pulling the vehicle into the garage area?

Mr. White: No. We're not going to be pulling anything into the garage. The garage will be used for loading up a kayak trailer for deliveries or demos. It's not meant to be used for people to come in and do installs.

Ms. Holbrook: How long does it take to install a rack?

Mr. White: It might be 10 minutes, but sometimes, it can be pretty in-depth and take hours. We spend that time on Main Street to unload a kayak trailer, which can take an hour. Often, we're laying anywhere from 40 to 80 kayaks along our sidewalk before we can carry them into our building. That can take three hours. And if our truck drivers arrive when they should, hopefully, we'll have parking spots directly in front, but there have been times where tractor-trailers block Main Street.

Mr. Wenstrup: You said you wouldn't be parking across the sidewalk in any event?

Mr. White: Yes.

Mr. Wenstrup: And do you have your trucks that you deliver or pick up things?

Mr. White: We have our vans or vehicles that we use. So those will be parked in the parking spots in the back? We're not going to use it for employee parking. Employees will use spaces along High Street.

Mr. Brumleve: So, it would be theoretically possible for a vehicle to pull in through the garage door onto the second floor.

Mr. White: Yes. We've consulted the engineer on the load rating.

Mr. Wenstrup: There's not a basement in that building?

Mr. White: If I walk backward 20 feet, there's a seven-foot basement below, but it only comes back 20 feet into the building. And that's just for utilities.

Ms. Evans: Will there'll be dumpsters on that back part?

Mr. White: We're not going to put in dumpsters. We need to utilize our parking as much as we can.

Mr. Price: So, there's going to be client parking?

Mr. White: Yes.

Mr. Price: From the edge of the road today to the proposed new building, you said that's 25 feet?

Mr. White: So, it's 28 feet from the street.

Mr. Wenstrup: What hours a day do you typically unload and load kayaks?

Mr. White: I try to get my truck drivers to show up before store hours, before 10:00, but they don't always do that.

Mr. Brumleve: You don't anticipate loading and unloading noisy trucks outside of a nine to five day?

Mr. White: We won't encourage them to come super early or late if residential is across the street.

Mr. Brumleve: Is there anybody from the audience that wants to comment? Any discussion?

Mr. Wenstrup: I have a lot of respect for the businesses that come to town. They take reasonable steps to grow organically; they grow based on their customers' needs. Improving the infrastructure of the building is good. I think it'll improve the front of the building. I think you've got good space to use. My concerns, I voiced the second you came into the room. I believe good partnerships with neighborhoods and a good collaboration with our downtown make for a great community.

Mr. Wenstrup: I think it's important as people make investments on either side of High Street that the City understands that we need to look at sidewalks and street surfaces and the fire hydrant in the sidewalk. All those things. I move to approve the major building improvement with the following conditions: 1. The city approval would be contingent on review and approval by the engineer and other local state and federal agencies, and 2. The lighting added to the High Street building face should not shine on the adjacent properties.

Ms. Evans: Second.

Group: All voted aye. The motion carried 4-0.

SITE 21-12 Aerie Subdivision (Milford South) Phase 1 and Phase 2 Final Plat.

Ms. Holbrook read the Staff Report into the record:

Project: SITE 21-12 Aerie Subdivision (Milford South) Phase 1 and Phase 2 Final Plat

Location: 777 Garfield Avenue

Property Owner: Milford BT 1 LLC
1009 Delta Avenue
Cincinnati, OH 45208

Applicant: Commercial Development Services Group (CDSG)
Paul Schirmer
1009 Delta Avenue
Cincinnati, OH 45208

Acreage: Phase 1 - 6.745 Acres; 20 units
Phase 2 - Area A – 4.861 Acres; 14 units
Phase 2 - Area B – 1.341 Acres; 6 units

Tax Parcel Id: 210729.069P and 210729.026P

Existing Zoning: Phase 1 - R-2 Single Family Residential
Phase 2 - R-4 Multi-Family Residential District, Planned Development Overlay

ADJACENT LAND USE and zoning

North: R-3 Single Family Residential District.
East: R-3 Single Family Residential District.
West: R-3 Single Family Residential District.
South: Valley View, R-2 Single Family Residential District.

Proposal

Paul Schirmer, Commercial Development Services Group, requests a Phase 1 and Phase 2 Final Plat review. The purpose of the final plat is to require formal approval by the Planning Commission before plats for subdivisions are recorded. The final plat shall conform to the approved preliminary plat and reflect all the changes required by the Planning Commission.

ANALYSIS

The final plat review is in Section 1105.07. Attached is the Final Plat Review of the Milford Codified Ordinance and a Final Plat worksheet.

The conditions of approval with staff notes (See CDSG Letter dated 9/27/2021).

SITE 19-21 Outstanding conditions:

- a) #11-30" pipe to be removed once the stormwater system is in place

SITE 21-03 Outstanding conditions:

1. #12 Applicant required to comply with bonds and sureties. Note: The Final Plat cannot be recorded until this condition is satisfied.
2. #16 -See note above

CONCLUSION AND RECOMMENDATION

Staff recommends approval of the Final Plat with the following conditions:

1. City approval is contingent on review and approval by the City Engineer and any other applicable local, state, and federal agencies.
2. The developer must comply with all bonds and sureties before Final Plat approval.

Ms. Holbrook: The kitchen hasn't been demolished yet, and the pipe hasn't been removed. Those conditions need to be taken care of or addressed to the satisfaction of the city engineer. Planning Commission will approve the final plat, and then the city engineer, the finance director, the city manager, and the owners will sign off. The engineer shouldn't sign off until he's satisfied that all the conditions have been met or will be met, and the finance director should not sign off until we receive the bond. This is the final step of the process.

Mr. Brumleve: And so, should we get to an approval stage this evening, the final plat will have to process through our city engineer and finance director before it comes before us one more time.

Ms. Holbrook: It won't come back before you; if you approve it, this is it. You can decide to wait and make the applicant come back once they've satisfied all these conditions, or you can approve it tonight on the condition that, administratively, it will be approved when the engineer and the finance director are satisfied.

Mr. Brumleve: They will ensure that all the items are complete.

Mr. Wenstrup: Does that have a detrimental effect on the developer having to wait until those other people sign off? Does it make a difference to them either way, whether we say now or later?

Ms. Holbrook: Well, the developer must satisfy these requirements. The developer is asking for you to review it tonight. If you feel comfortable with a conditional approval that these items will be taken care of before the engineer signs and the finance director sign off, you can approve tonight. Or you can ask the developer to come back.

Mr. Wenstrup: So, does any of this address put back landscaping, trees, and stuff like that? Or is that a different phase?

Ms. Holbrook: The condition for the environmental easement states that there's no indiscriminate cutting of vegetation. We walked the site with the developer, and they hired an arborist to determine which trees were alive and which trees were dead. I know there have been many complaints about the number of trees removed, but many trees were dead.

Mr. Wenstrup: Let me phrase the question differently. They'll build the homes, and each homeowner can landscape their home as they see fit. Correct?

Ms. Holbrook: Correct.

Mr. Wenstrup: There is quite a bit of common area. And I'm curious if there's a plan or a certain number of trees that they must put back in the common area A, behind the homes on Aerie Lane and the common area surrounding that area.

Ms. Holbrook: It wasn't a part of the approvals, but you could add that as a condition.

Mr. Wenstrup: I want to ask the developer because I would like to have it on record that "Yes, we have plans to do that or No, we don't." It's been an important factor for the neighbors and people in the area. And I think they want to hear that.

Ms. Holbrook: The developer talked to potential buyers interested in putting up a fence. Under normal circumstances, a homeowner in Milford can install a fence on the property line. Does the environmental easement prohibit fencing? I want to resolve that issue tonight.

Mr. Schirmer: Paul Schirmer, CDSG 1009, Delta Cincinnati, Ohio 45208. There's quite a bit of earth being moved from the upper portion on the hillside to the lower part of the site. We're starting our stormwater and utilities work.

There's some demolition to the existing school that was to happen. We did take down the building in the rear. The portion that's the old former kitchen is the appendage that also needs to come out. We met with our demolition contractor last week. They're scheduled to be out there to start some interior work in the next couple of days. And then the guys working on site want to take that portion down in the next couple of weeks.

On the rights side of the development towards Apple Lane, there was a comment about the 30-inch storm sewer pipe that's still there. We don't want to take that infrastructure out until we've got the new infrastructure in place. They're still working on shaping the pond in the upper right-hand corner. We're not going to rip out the 30-inch pipe because it may cause some problems for the neighbors.

We're working with Tim Castro on the bond. I think that's a matter of timing regarding the infrastructure completed when the bond is in place. As developers, we're looking for that bond to be as low as possible. And I think he's got just about everything included, including the dirt work. There's a negotiation about how much needs to include, but the bond will be in place before recording the final plat. We already have a letter from our surety company. That's in progress.

Another major item in previous meetings was the routing of stormwater. We received a letter from Valley View that I believe was in your packets. One of the major things they needed to confirm with some of their funding sources was their ability to grant the easements required to run the stormwater over to that outlet. We completed the survey needed to go out there in the field and locate where that alignment will occur. We're setting up a meeting with Valley View to review those locations and get the stormwater taken care of.

Mr. Wenstrup: Have we had any rain? Have you noticed any different water flow since you've moved the land around a little bit?

Mr. Schirmer: None was reported to me. Tim, I don't know if you've heard anything?

Mr. Casto: Nothing has been reported.

Ms. Holbrook: Tim told me earlier that some of the erosion control measures that are supposed to be in place haven't been put in yet.

Mr. Schirmer: Yes, we met on-site a couple of weeks ago. We talked about some additional erosion control that needed to occur over near Christine McBroom's side. And as everybody can

tell, we've got plenty of mulch to make that happen. I'm not sure why the site contractor has not installed that yet. We'll make sure that that happens as soon as possible.

Mr. Brumleve: I have a question about the notion of fencing in the 20-foot buffer zone. I'm noticing that the language only talks about building construction. Is that an appropriate limit, Pam? I mean, that's the only limit is a building?

Ms. Holbrook: I was thinking of sheds and structures like that. They came back and asked about fencing. What about a swing set? Did we want to exclude fencing or include fencing in the 20-foot buffer?

Mr. Wenstrup: How does the HOA address those two questions? Swing sets and fences and above-ground pools?

Mr. Schirmer: The HOA does not prohibit it. We see people wanting to install a fence or a privacy fence adjacent to it to help privatize their property. And then when we discussed it on site, it was more of a distinction between, is it a structure? Is it not a structure? And will it impede any kind of stormwater? We felt it should be allowed if it didn't obstruct the stormwater.

Mr. Brumleve: That turns into a matter of interpretation. I could see where a chain-link fence is not a significant impediment to water flow on any given day, but it could present a problem as soon as leaves get bunched up against the fence. And if we're allowed to fence out to the line, why can't I put my swing set there? Since it's my swing set, why can't it be my shed? If it can't be my shed, why can't it be my plantings? No, I don't like the ugly tree anymore.

Mr. Schirmer: That is covered by the HOA where it does not allow a structure within that environmental easement. So, the shed would not be allowed, but if the chain-link fence becomes a dam, that is governed by the HOA because you're not allowed to impede stormwater.

Ms. Holbrook: Tim, do you think a six-foot privacy fence would impede the stormwater?

Mr. Casto: If correctly held above ground elevation, it shouldn't.

Mr. Brumleve: It becomes nuanced. Doesn't it?

Mr. Schirmer: There's language on the plat that talks about the environmental easement area and any structure within the easement needs to be reviewed. So, if somebody wants to install a fence, they will have to get the proper approvals.

Mr. Brumleve: We have the natural buffer, and then we have the drainage issues, which could be within that natural buffer. So, what instrument has the teeth to ensure that things don't get clogged and provides that nature doesn't get despoiled?

Mr. Schirmer: Well, it's not only the HOA. It's also where we've got some stormwater easements. So, for instance, on that left side of the development, we've got some stormwater easements that have the HOA governance and have the ability for the city engineer and City public works personnel to come through and inspect to make sure that everything is clear.

Mr. Brumleve: Has there been any feedback or thought about how the City would handle that?

Ms. Holbrook: If a fence were installed and obstructed the flow, the City would have to contact the property owner.

Mr. Casto: That would be an instance where the issue is in a public easement. Private easements would be an HOA function [inaudible 01:00:00]. The other thought with the environmental easement is to allow habitat migration along that corridor, whether deer or another animal might want to migrate. [crosstalk 01:00:27] Would a fence be a barrier to that migration? I'm not sure the original intent for the environmental easement [inaudible 01:00:35].

Mr. Schirmer: I'd say that's the first-time migration has been brought up.

Mr. Wenstrup: We all love our animals, but I think the bigger question is redirecting water flow. I would think if I had a house adjacent to and downhill from the properties, I would benefit from a homeowner's association rule that says a fence must have a clearance. And if you're on a hillside and that fence obstructs or redirects water flow, you need to undo that let the water run freely.

Ms. Evans: If the fence is 20 feet out, the water's going to hit it either way. Eventually, it's going to collect water. Does that 20 feet make a difference?

Mr. Brumleve: It also becomes a matter of how coincident this 20-foot natural buffer with the drainage requirement is. If the drainage requirement is another 30 feet worth, within that, then whether the fence gets into the natural buffer or not becomes moot.

Mr. Schirmer: Plus, your conditions will change from lot to lot.

Ms. Evans: I agree with John. If the HOA addresses it, I'd feel comfortable.

Mr. Schirmer: A section in the HOA document addresses stormwater and non-obstructed water flow.

Mr. Brumleve: That's why I want to separate issues here because I think the problem that seems to be at hand is whether we're going to permit playsets and fencing in the natural buffer around the subdivision. It's not entirely about drainage, and I think that you've just addressed that it's in the HOA. We're not going to mess up our utilities, which is what stormwater is: whether it's a private or a public easement. It ends up being a subdivision quality question. Are we going to say that our fence lines can go out into the natural buffer or not?

Ms. Holbrook: Our existing ordinance allows a property owner to install a fence on the property line.

Mr. Brumleve: The HOA still stipulates that we must maintain the 20-foot natural buffer no matter where we put that fence. Rules will get broken, but we won't police that. We can anticipate enough neighbors who will notice and want to say something about it.

Ms. Holbrook: So, if somebody called the City and complained, we would investigate. If we determined that a property owner violated a condition, we would notify them.

Mr. Brumleve: City or HOA?

Ms. Holbrook: Well, if it's a city condition, the City would get involved. I would prefer that the HOA handle as much of that as possible. How would I feel if I bought a lot there? I probably would want to install a fence. It seems like something a property owner would want to do.

Mr. Brumleve: So does the HOA need to define building construction explicitly, including playsets, for example?

Ms. Holbrook: Do you consider a playset a building structure? They usually don't require a building permit, so that's one way I would look at that.

Mr. Wenstrup: Many of them are temporary, but some are substantial.

Mr. Brumleve: Effectively, it is a building. Should we have a condition placed upon this that building construction is not permitted in this area without the prior consent of the City? Should we be explicit and say, "Any construction, including fences," or do we say, "Building construction shall include playsets, but no fencing."

Mr. Wenstrup: Don't you have to get a permit to put up a fence?

Ms. Holbrook: Yes, it's a zoning signoff.

Mr. Wenstrup: If they want to build a fence and get a zoning signoff for it, the homeowner's association has some restrictions that will address the concerns we're talking about. I don't want to over-manage it.

Ms. Holbrook: I think they should be allowed to install a fence on their property. It would be treated like any other property in Milford. The HOA should control the playsets.

Mr. Brumleve: Do you have language in there about that?

Mr. Schirmer: I've got prohibited accessory structure, swimming pools, play equipment, section 8.1.11. Playsets constructed primarily of wood are permitted on any lot, provided they are installed in the rear yard area within the legal rear and side yard setbacks.

Mr. Wenstrup: In what timeframe do you think you would meet the required conditions?

Mr. Schirmer: We are working towards completing those items in three or four weeks.

Mr. Brumleve: All right. With that, we invite the public to step forward to the microphone.

Ms. McBroom: Chris McBroom, 729 Garfield. I'd just like to go through some of the conditions. It seems like there's quite a bit left to do. Let's just let them go and finish it when they want and

how they want and not have to commit and have everything completed, which is the whole point of having a final development plan.

I was going through the letter submitted by Paul, dated September 27. On page two, which is site 21-03, phase two. The first condition, the third item, is that the EPA is still reviewing the water main extension.

Ms. Holbrook: It is completed.

Ms. McBroom: I'm looking at the top of page three, the second condition, the stormwater maintenance plan. They're still directing water toward my property, and you're not allowed to do that legally. So, I'm going to say it one more time because it's not finished so far. I wouldn't know that it would impact my property detrimentally, but it could. And that leaves me with, what am I going to do then?

Mr. Wenstrup: You're going to sue them.

Ms. McBroom: The City won't be enforcing it anymore?

Mr. Wenstrup: So you're saying the water has increased or it's the same, or less now?

Ms. McBroom: It hasn't rained very much.

Mr. Wenstrup: So, you don't know?

Ms. McBroom: It rained one time, and debris came down the hill, and it's all over my yard, and no one's cleaning it up. No one's contacted me to clean it up.

Mr. Wenstrup: Did you make them aware of that?

Ms. McBroom: I called Pam, and she set up a meeting. They said they would take care of the erosion control. Paul said they hadn't done it. And the debris is still in the yard, and nobody's called me up to say, "When can we come over and clean up this mess that we've created?" So, it's just the first time it rained, and it's going to be happening a lot. The 30-inch pipe is still there. When they started doing the dirt movement, I talked to Pam because I thought, "Why are they putting all this dirt on top?" It's several feet higher than it was, and the water's still coming out the pipe. That was the whole point.

And who's going to enforce this against them if the planning commissions already approved everything? Who do I go to then? I want to add something to the HOA documents that state that nothing should be interpreted to prevent people who benefit from these water drainage easements from enforcing it against the association. It doesn't say that. And I think that would be an essential enforcement tool for the downhill owners to require the HOA to comply with their documents without going to court.

Mr. Wenstrup: So, who would adjudicate that then?

Ms. McBroom: The HOA would be required to enforce their documents at the request of an adjacent property owner, not just the owners.

Mr. Wenstrup: If they declined, who would adjudicate that?

Ms. McBroom: Well, then I'd have to sue them. But at least I could try to get [crosstalk 01:23:08]. The big deal for me is the stormwater because it's not handled like ordinary stormwater, which goes into the storm sewers. It's going across my backyard to Valley View.

Mr. Wenstrup: This is a process, but I think we can make a punch list. I know the 30-foot pipe is still there, but he said he'd remove it. That's not a hard thing to do, is it, Paul?

Ms. Evans: Isn't staff or someone checking to ensure it's done?

Ms. Holbrook: Yes, that's all part of the stormwater plan.

Ms. McBroom: I wanted to add something to HOA documents under number two to provide that nothing in the document should be interpreted to prevent enforcement by neighboring properties.

I'm on condition number three now—outlet to the south side of Garfield. There's no easement yet. Valley View hasn't signed an easement. Last Friday, someone was out at my property putting stakes in the ground in my front yard. Nobody's talked to me about an easement. A surveyor said they were looking to place an outlet in my front yard to serve the next-door neighbor's property. Now, I don't know the status of that, but it's not the final development time if that's still an open issue. Where is the runoff going to go? Across my property again? Front yard and backyard? So, I think that's another open item. Down to number seven, which isn't a big deal, but the HOA documents, they've only been provided for phase one. I don't know if they're going to be identical or not. On number nine, the impervious surface calculation. Has that been provided?

Mr. Messerly: It's on the final development plan.

Ms. McBroom: I hadn't seen it. So, what is the calculation?

Ms. Holbrook: I don't have the final development plan down here. We're looking at the final plat tonight, but I can get that for you.

Ms. McBroom: Is it within the parameters of what it's supposed to be?

Ms. Holbrook: The developer provided before development and after development impervious calculation. It doesn't have to be a certain amount. The developer must provide that information.

Ms. McBroom: Why would you require it, if it doesn't have to be [crosstalk 01:29:49].

Ms. Holbrook: So that you know how much impervious area there is.

Ms. McBroom: But isn't there a limit on how much it can be or not? Or why else would you care?

Mr. Casto: So this gets into the stormwater utility, and with the HOA and some of the private infrastructure to make sure that we have some of those numbers to facilitate the stormwater utility and use those calculations for setting rates.

Ms. McBroom: For stormwater?

Mr. Casto: For the stormwater utility.

Ms. McBroom: Sorry, I don't understand that.

Mr. Casto: There's a stormwater utility in the City of Milford, and everybody pays a stormwater fee based on your impervious area.

Ms. McBroom: Back to number 11, the 20-foot quote "environmental easement." Now, of course, environmental easement, what does that mean? That's the question. Isn't it? To me, an environmental easement means you leave it alone. You don't take down all the trees and every bit of bush and scrape the dirt and call it an environmental easement. It's not an environmental easement if you just destroyed it. So, what do we do about that? Here's an enforcement issue. They've already violated one of the provisions and one of the conditions.

Mr. Wenstrup: You said that's not an environmental easement.

Ms. McBroom: An environmental easement isn't something that's cleared of trees and bushes. Environmental means you leave it alone. It's supposed to stay natural.

Mr. Wenstrup: That's your interpretation. I don't know if that interpretation applies to this development, though.

Ms. McBroom: Well, I guess the question is, what did you mean then when you put it in there as a condition?

Ms. Holbrook: That building construction or indiscriminate cutting of live trees. It doesn't say you can't cut anything down. It means you can't clear-cut.

Ms. McBroom: They did clear-cut.

Mr. Baird: We've had an arborist out there four separate times. We walked it at least twice with Tim and Pam. And we've tried to maintain as many trees as we can. The arborist felt as though many of the trees out there were already dead. And many of them weren't going to survive because of the grading. He didn't want to leave trees that would die and have a potential fall.

Ms. McBroom: I'd like to know who the arborist was. Did they file a report? I'd like to see it because they didn't take down all the trees along the whole area. It's just right up by my front yard, right by the street. They even knocked down some in my area on their property, but it

was well within 20 feet. And they knocked down some of my bushes, which doesn't leave a 20-foot environmental easement. I can't imagine that you could put a fence. The fence has got to be on the other side of the environmental easement. You can't go all the way to the property line.

Mr. Brumleve: Fences can be consistent with the rest of the City? I think we've settled that the fences will be treated like the rest of the City and would be able to go up to the property line.

Mr. Wenstrup: It's not a neighborhood easement, a common area, or a public park. It's an environmental easement, and they have to consider the environment and remove hazardous trees. But that doesn't mean you just let things grow wild and unmanaged, particularly in the housing development where people are supposed to live, and you've got trees that could fall on those houses. So having a certified arborist come out and tell them those things gives them objective input. It's difficult because we live in a heavily treed area, and you're not allowed to touch a tree unless it's dead. Do you question the integrity of the arborist and think that the arborist was bribed to let them cut down more trees. Is there a landscaping plan? I'd like to see that. I'm not saying they must have it, but I'm saying if you've got one, I would love to see it

Ms. McBroom: Well, I'd like to put that on the punch list as a requirement. To put back what was removed. At least plant something there because that was the environmental easement to me.

Mr. Wenstrup: I think you have a different understanding than they had.

Ms. McBroom: Apparently. The bonds and the sureties are not done yet. So there's another open item.

Ms. Holbrook: The city engineer will not sign off on the final plat. The finance director's not going to sign off on the plat until those things are satisfied. The plat can't be recorded until all those signatures are on the plat.

Ms. McBroom: I know, but will the engineer remember all the things that must be done.

Ms. Evans: Yes. It's their job.

Ms. Holbrook: I don't think he's going to put his name on something that he's not sure about. And the finance director is not going to put her name on something that she's not sure about.

Ms. McBroom: I know, but what's the purpose of a final development plat if it's not final? That's my point.

Ms. Evans: I guess we all can't approve at the same time either. At some point, they have to sign, or we have to approve. It's going to be out of order. I trust the staff to take care of those things. [crosstalk 01:38:31]

Mr. Brumleve: Yes. And we've made conditions that must be met before those signatures can appear on the plat.

Ms. McBroom: But does the city planning commission lose jurisdiction once you approve it?

Mr. Brumleve: No. [crosstalk 01:38:44] We have already committed to documentation that these conditions shall be met.

Ms. Evans: Okay. We're approving it based on if these things are done.

Mr. Brumleve: Well, that's why we have the system in place to do it. We must work our systems.

Ms. McBroom: That's good. It's just that things like erosion control aren't done.

Mr. Wenstrup: Well, we're trying to resolve problems for people downhill and beyond what they were experiencing before the development. And I think that's good faith. I know, having lived next to construction before, after a while, you go, "Are they going to take care of this, or am I going to get stuck." So, please, trust the process.

Mr. Brumleve: We're not here to exercise authority. We're here to shoulder responsibilities. And when we put our approval on it, we trust other portions of the system to shoulder its responsibilities to conditions we've asked for, conditions they already know they're under, laws, regulations, easements.

Ms. Gorman: Patricia Gorman. I'm at 24 Wallace Grove Lane. I probably had a different understanding of the environmental easement. I have before the destruction pictures along our whole street on Wallace Grove. And there isn't any spot that overlooks that area that isn't destroyed. It looks devastating. It looks desolate. We have never been able to see the street before. We didn't even know what was down there. We would not be able to see anything. We see trucks going back and forth or whatever they use to dig up the dirt, and we see the street.

I think the push for the environmental easement came from our area because we have enjoyed a beautiful street and it is destroyed. A lot of the elderly people that can't be here are crying because they have enjoyed such a wonderful environment, and it is gone. And if you talk about putting up fences and playthings and all that stuff... I know we're spoiled. Many of us have lived there for 30 years, and we've enjoyed it. Now we wake up every morning before nine o'clock to trucks going back and forth and have to watch this destruction daily. I'm a walker. And I walk the street every day, take pictures, and have before the destruction pictures. It's heartbreaking.

Mr. Brumleve: Thank you very much. Any other public commentary? I think at this point, Mr. Schirmer, would you like to address any of the questions that have been raised.

Mr. Schirmer: One of Ms. McBroom's major comments was regarding the HOA and enforcement. Section 13.1 in the HOA document talks about enforcement, which gives the HOA the right to enforce, by proceeding at law or inequity, all restrictions, conditions, covenants, reservations, liens, and charges; now and hereafter imposed by the provisions of this declaration. So whether it's swing sets, fences, stormwater, any rule or regulation within there, the association has the right to step in and enforce and correct the situation.

Ms. McBroom: But, Paul, isn't the word owner capitalized?

Mr. Schirmer: Owner is capitalized.

Ms. McBroom: That's a defined term in the document. That doesn't include me.

Mr. Schirmer: If you would like to buy a house in the association, you would be an owner.

Ms. McBroom: No, but I live next door. I'm not included in that.

Ms. Evans: Typically, they're not.

Mr. Schirmer: I think the comment is she would like to be included in the HOA or some party too, and I'm not sure that would happen.

Mr. Wenstrup: But no, you can't extend the HOA to adjacent properties unless they want to pay HOA fees and have their homes inspected by the HOA.

Mr. Brumleve: It requires some level of investing.

Mr. Wenstrup: And that's ludicrous. I don't think that's what she was suggesting. I hope not, but any homeowner in the HOA would have the right to sue individual homeowners or address the HOA with their concerns. And there are mechanics for that.

Mr. Brumleve: Essentially, the HOA is a homeowner within the City at that point and would be held liable to the regulations as a homeowner.

Mr. Schirmer: Well, correct. Any adjacent owner who felt wronged would have the legal recourse that any other owner would have.

Mr. Wenstrup: So everything in Paul's letter has to be verified and signed off by the engineer and by the finance director. Correct?

Ms. Holbrook: The finance director is approving the bond.

Mr. Wenstrup: These other things involve site development and completion of certain things?

Ms. Holbrook: Right. Either fall in the engineering or zoning approvals.

Mr. Wenstrup: That is a punch list. And, I'm all for doing everything we can for our homeowners, but I don't mean tangle up a lot of red tape around people acting in good faith. So my tendency, just to put it out there, is not to ask the developer to respond point-for-point at this meeting, but meet the requirements, get the engineer to sign off, and let's rock and roll.

Mr. Schirmer: That would be our goal.

Mr. Wenstrup: That's my inclination because we have the pieces in place. We have a punch list. I can add one request. And that is if there is landscaping or is reforestation that's going to take place, I understand why any homeowner who's had the benefit of an unrestricted view for 30 years or longer of a beautiful woodland would be devastated to see it go. I can understand that it would be heartbreaking, but it's not their property. So they got the benefit of somebody else letting their property stay in trees for a long time. That's not heartless. That's just the fact of land ownership in the United States of America.

Mr. Brumleve: I'm not sure that the plat is our vehicle for landscaping.

Ms. Holbrook: It's not.

Mr. Wenstrup: Are there packages that they can ask for landscaping when people buy a home?

Mr. Schirmer: That's part of the builder package. We are in the process of getting a landscape plan together for the front entries and that sort of thing.

Mr. Brumleve: To address the vehicle in question here, which is the record plat, we are here to make sure that the instruments that we've got here, be they documents or otherwise, are reflected in this record plat. So that's our primary task this evening is that the legal bounds of the record plat are appropriate and address the vehicles, be they contracts, punch lists, or any other document we have at hand that is congruent with that record. I think that's what we're trying to achieve this evening.

Mr. Schirmer: As far as the rest of the points, I think the discussion took care of a lot of that stuff regarding impervious surface calculations submitted throughout the process. The environmental easement definition, we talked about it multiple times. Fence location, we talked about numerous times.

We don't have a specific plan that calls out a one-for-one replacement for the landscape and reforestation. We did try to maintain as many trees as possible. As mentioned earlier, we had the arborist out there. I would say no less than four, five, or six times. There are still a few problematic trees around the perimeter. To help with the reforestation, we've talked about topping them instead of taking the trees down. In which case, the arborist recommended not topping those trees until about January or February. The tree's sap, which he called the tree's energy, basically goes down into the trunk and the roots throughout the fall. If you top the tree around January or February, it has all that energy in the spring and can bloom out in a very fruitful regreening. If we were to do that right now, we'd essentially kill the tree.

Mr. Schirmer: We have taken some of those considerations in mind around the perimeter to try to be sensitive. We've kept as many of the trees on the hillside as we possibly could. So, you could probably see that separation that we have between the lower and upper sections, where we still have a significant grove of trees between the two developments behind the school.

Beyond that, I think we talked about the sureties and bonds required, which will be in place at the appropriate time. And then the final comment was, again, about the environmental easement. So, if you have any other questions, I'd be happy to answer.

Ms. Holbrook: Could you address the markers she referred to?

Mr. Messerly: So throughout the process, we've submitted to the engineer a plan for the stormwater piping across the Valley View property. That entails an existing storm inlet on our property that will be replaced. The inlet will go from that current inlet, fairly close to Chris McBroom's property at our southeast corner. We go from that within the right-of-way to a new storm inlet in front of Chris's house, which is where that lath would be. The surveyors place stakes or survey markers where the proposed storm inlets will be located. From there, we'll walk the site with Milford personnel and Valley View personnel to be sure that everybody's comfortable with those storm inlet locations.

So that's what that lath is there for now. And we're trying to organize that meeting. We have an inlet in front of Chris's house because we will not be able to come across that existing inlet on our property directly across the street. Because there are multiple big trees across the street, Valley View has prohibited us from impacting. So subsequently, we will go along the Garfield right away, to the east in front of Chris's property, and then go to the south perpendicular to Garfield, to another storm inlet on the Valley View property. So that's why the inlet needs to be in front of Chris's property. And there is already an existing storm pipe that's dilapidated and is decayed that runs from that existing storm inlet and to that existing stone box culvert that runs underneath Garfield in that valley. So, there's already a pipe there, and we will be replacing that pipe with a new pipe, placing an inlet, not too far from Chris's property, and then crossing over Garfield to avoid the trees that Valley View is prohibiting us from impacting that are located directly across from that existing storm inlet.

Mr. Brumleve: Are those inlets in an existing easement?

Mr. Messerly: Well, everything is within the public right of way.

Mr. Casto: When you say on our property, you're saying in front of a property, but within the public right away.

Mr. Messerly: That's correct.

Mr. Casto: Not on private property.

Mr. Messerly: That's correct. It's within the right of away. The blue flags are markers to locate the property with the city engineer. These stakes reflect Stan's plan.

Mr. Brumleve: I noticed there's a non-trivial amount of pipe in here.

Mr. Messerly: It's a two-foot diameter pipe, all of which is being implemented, per Chris's request, to divert as much water away from the rear of her property as we could.

Mr. Wenstrup: So, you're in good form because you've got the right to access the right of way and pick the pipeline location, which has the least impact environmentally at Valley View and channels the most water most efficiently. When would someone like Chris be notified that this will be happening in the easement in front of her house? Because I think they would do that once they've decided the final location, they would tell the homeowner we're going to be excavating in the right of way in front of your home. Is that when that happens?

Mr. Messerly: I don't know what your policy is. We would wait until final alignment is established. All we have now is information to establish that alignment.

Ms. Holbrook: You'd be getting a street opening permit. And that would be reviewed by Tim and approved, and then you would be allowed to work in the right of way.

Mr. Wenstrup: This 20 ft environmental easement has been cleared, correct?

Mr. Schirmer: I would say maybe 90, 95%.

Mr. Wenstrup: Can trees be planted back in that?

Mr. Schirmer: Absolutely.

Mr. Wenstrup: I think everybody would be interested in that. I don't know if there is a reforestation program where there are state or federal, or county matching funds to put in trees, but I would certainly think the level of appreciation and the level of good faith would be increased if you could look into that.

Mr. Schirmer: We can look into that.

Ms. Evans: But adjacent property owners can also put trees back on the property.

Mr. Brumleve: Specifically, is our record plat submitted this evening, congruent with the easements that we need to continue further our environmental easements, our sewage and waste-water easements, etcetera, there is enough ink on paper to say, we've got these covered? I think it goes to Tim as well.

Ms. Holbrook: We've reviewed the documents and are okay with the plat and the easements described on the plat.

Mr. Wenstrup: And your recommendation stands that we approve it subject to the things that you have in your report.

Ms. Holbrook: Right, with the caveat that it's not going to be recorded, meaning lots can't be sold until Tim and the finance director sign off.

Mr. Brumleve: And the management of the natural setback is not a subject of this plat, how it gets managed or enforced.

Ms. Holbrook: No, it's not.

Ms. Evans: I'm comfortable trusting staff to finish up the things on the list.

Mr. Wenstrup: I would concur. We've done our job, and we've listened, and we expect staff to do their job. We didn't cut you any slack on this development, and we've asked you to listen to community feedback. From my vantage point, you've made every effort to try to remediate some problems that have existed for a long time for people who haven't done anything about it themselves. So, that's a big deal to me. You can't put back trees that are going to be 40 ft tall, but you can address that because it does affect people's lives. We don't want to succumb to the development at the expense of people who have put their life into a community. And that's a very unwelcome side effect or circumstance of helping your community grow and develop.

Mr. Brumleve: I think that the plat, as put forth in front of us this evening is congruent with what we want to see approved. I would entertain any additional conditions needed from the commission that needs to be imposed. I don't see any myself, but I was wondering.

Ms. Holbrook: Let me just clarify. We talked about the pipe, the kitchen demolition. That is also supposed to be done before the final plat.

Mr. Brumleve: I think we have those instruments in place.

Mr. Wenstrup: I would like to add a condition that the developer shares any environmental remediation planting before we approve the final plat. I think that would help us and help you and build a bridge. I would like to put that in that we see any softscape.

Ms. Holbrook: You're asking as a condition that they provide a landscaping plan?

Mr. Wenstrup: All these properties will have seed or sod, but that's up to each homeowner. I understand that.

Mr. Brumleve: Is it necessary, Pam? If I understand correctly, we also have the development plan, which largely sits in your purview.

Ms. Holbrook: That's correct. You have already approved that. That would be a zoning issue after the fact. You ensure that they completed everything on those lists and the development plan matches.

Mr. Wenstrup: So this 20 ft easement, whose responsibility is it to put sod or ivy or bushes or gravel or rocks or landscaping or hardscaping or whatever, whose responsibility is that? That's not the homeowner that's common area.

Ms. Holbrook: That's the property owner.

Mr. Wenstrup: Oh, the easement's part of their property. Is it not just common area?

Mr. Brumleve: Correct.

Mr. Wenstrup: I'm curious, how does it address the common area to the HOA. The HOA takes care of that?

Mr. Schirmer: You've got the R2 zoning and the individual owner on this side of the development. And you've got common area A that loops around the whole street on this side. We'll have landscape there.

Mr. Wenstrup: I'd like to see it. Okay. And I'd like to make that a condition.

Mr. Brumleve: I don't think that's in play this evening.

Ms. Holbrook: You can make a motion to add that as a condition.

Mr. Wenstrup: Is that problematic for you? You're going to do the plan anyway.

Mr. Schirmer: No, we can submit a plan before the signing off.

Mr. Wenstrup: Thank you.

Ms. Evans: Just for that common area? Are you okay with that?

Mr. Brumleve: It's not in my purview.

Mr. Wenstrup: It's not a problem. He's going to do it anyway.

Mr. Schirmer: We'll submit it before the final plat signoff.

Ms. Holbrook: To planning commission? Are you going to bring this to the planning commission? [crosstalk 02:10:47].

Ms. Evans: To staff.

Mr. Wenstrup: I think more than one person will sleep better tonight, knowing that's a condition of our approval. And I think if we can do that and it's no skin off his nose, I think we should.

Ms. Holbrook: So, you would make a motion to add a condition.

Mr. Brumleve: So just to put the groundwork for a motion in place here, we already have staff recommends approval of a final plat for the following conditions: city approvals, contingent on review and approval of city engineer and any other local state and federal agencies, developers to comply with all bonds and sureties. Before final plan approval, you would like to add a third condition.

Mr. Wenstrup: Yes, sir.

Mr. Evans: The common area landscape plan shall be submitted to staff for comment.

Mr. Brumleve: Shall be submitted to staff and made available for comment.

Mr. Wenstrup: Yes. Exactly. And it becomes part of the public record too. I think it's important. So later, if there's just a big muddy pile there and they've said that they will plant azaleas, we have something to fall back on. At least we're trying to give the homeowner some assurance of what's to come.

Ms. Holbrook: The final development plan included a landscaping plan, but I don't have it before me. I think what you're asking is for some additional landscaping to be planted back there.

Mr. Brumleve: Can you please comment on the nature of that plan for us please? Since we don't have it in front of us.

Mr. Messerly: For phase two, where the common area exists, the lots occupy a large percent of it. And the landscaping of that space is up to the homeowner. So, we had proposed landscaping along Garfield in that common area, but you also have to keep in mind that we still have the existing vegetation remaining in this area through here. There is a draining soil that goes through there. But the vast majority of the vegetation is staying there.

This area is pre-existing landscaping. This area here is up to the lot owner. This area is a storm storage facility, which we can't landscape because we need to add the volume. This area is another storm storage facility where we need to add the volume such that it can't be landscaped. So, that left us with the frontage.

Mr. Brumleve: Correct. Common area A encompasses everything in phase two outside of the actual building pads themselves. If I'm reading this correctly, it has a landscaping plan developed for it.

Mr. Messerly: Most of it is existing vegetation. And then also what the individual owners want to provide for their landscaping. It's up to the individual resident to landscape what's outside of their house. That would encompass all these rectangles. This section here is existing vegetation that's left in place.

Mr. Brumleve: Basically, part of our confusion about this whole notion of fences going into the landscaping or natural setbacks is pertinent to what is going on in phase one. In phase two, we're not going to see a place that's going in against Chris's property because that's the common area. And that's our most sensitive drainage areas as well. Am I correct in characterizing that?

Mr. Messerly: That would be accurate, and a fence along this line would generally be perpendicular to the flow of water. So the water would flow along the length of the fence instead of into the fence.

Ms. Evans: Okay. I feel like we don't need to add this because it's already been taken care of.

Mr. Brumleve: I think it's already structurally inherent. This is a discussion. We're allowed to discuss.

Mr. Wenstrup: I understand, and that's why it should be straightforward to outline what he said in the final plans and then say, and we're going to plant a bush here and a tree there and maybe some evergreens.

Ms. Evans: But we approved that already.

Mr. Wenstrup: Let's vote. I make the motion that we have it there as a condition. So, with the following condition number three being a submittal and description of landscape plan to the staff. I'm going to add the word submittal of an "updated" landscape plan to the staff because there are probably things that need updating, and Paul said he's very comfortable doing that.

Mr. Brumleve: I second your motion.

Ms. Holbrook: Okay, so now we vote. You're seconding the motion to add the third item. Okay.

Mr. Brumleve: Yes, we are.

The Planning Commission voted 4-0 to approve the final plat with the following conditions:

1. City approval is contingent on review and approval by the City Engineer and any other applicable local, state, and federal agencies.
2. The developer must comply with all bonds and sureties before Final Plat approval.
3. Developer to submit updated landscaping plan for Common Area A.

There being no further business or comments to come before the Planning Commission, Mr. Brumleve made a motion to adjourn the meeting at 8:20 PM, seconded by Ms. Evans. Following a unanimous decision, the ayes carried.

Assistant City Manager

Mr. Brumleve, Chairman