

Council met in a **PUBLIC HEARING**. The President of Council called the meeting to order at 5:30 p.m.

Member(s) Present: **Mr. Richard F. Balog** (Ward 1)
Mrs. Ann I. Stranman (Ward 3)
Mr. James M. Trisket (Ward 5 – arrived at 5:43 p.m.)
Mr. August A. Pugliese (Ward 2)
Mr. Christopher J. McClure (Vice President)
Mr. J. P. Ducro IV (Council President)

Member(s) Absent: **Mrs. Julie A. Lattimer** (Ward 4)

Officer(s) Present: **City Manager James M. Timonere, City Solicitor Michael Franklin
City Auditor Dana D. Pinkert, Clerk of Council LaVette E. Hennigan**

Officer(s) Absent: **None**

SUNSHINE LAW: The Clerk of Council certified the requirements of the Sunshine Law had been met.

PURPOSE: The Council President announced the purpose of this Public Hearing was to hear comments regarding NEO Development Inc.'s request to rezone property known as Washington School Block, located between Lake Avenue & Michigan Avenue and West 9th and West 10th Street, from C-1 (General Commercial District) & R-2 (Single Family Residential District) to C-2 (Central Business District)

WELCOME: The President welcomed visitors.

DISCUSSION

Mrs. Ann Rapose, 1235 Walnut Boulevard: expressed concern with the request because C-2 height allowance is over 6 stories high (C-1 is only up to 6 stories), and because there are no tall buildings in the area of request.

Mr. Ron Kister (NEO Development Inc.): said:

- * Most people are familiar with his buildings
- * There is a sign erected on the land "will build to suit";
- * There are no immediate plans for the land, but when people are interested they do not want to wait the time it will take to go through the rezone process, so he would like to get it out of the way now;
- * He owns the 1200 block of Lake Avenue, at the corner of State Road & East 51st Street, on Aetna Road, which is basically the type structures NEO builds;
- * He received one call about the property from a Cleveland realty about 4-5 months ago;
- * When the Lake Avenue plaza was built others were zoned heavy industry; they might be C-1 now;

- * He would be willing to sign an agreement that nothing higher than what is allowed in C-1 (6 stories) will be constructed; and that
- * Most of the construction would be 2 stories.

The City Manager reported:

- * C-1 (General Commercial District) = 6 stories or 75 feet
- * C-2 (General Business District) = 10 stories or 150 feet
- * M-2 (Heavy Industrial District) = 12 stories
- * Most of the corner of Lake Avenue/Carpenter Road/West Avenue are zoned M-2 (Heavy Industrial District)

The President called attention to the Solicitor following remarks:

*The surrounding properties are either R2 or C1. The nearby properties on Lake Avenue are almost all C1. Granting the request plops an "island" of C2 property in the middle of differently-zoned property. There is a risk that too much spot-zoning can result in a City's zoning plan being ruled arbitrary and capricious by a court, which is to say, unconstitutional. That would possibly void the City's entire zoning plan. Mr. Kister's application indicates a general plan to develop the property at some point in the future. In the absence of actual, pending development plans that require C2 zoning, I strongly recommend that Council hold a public hearing on whether to change the zoning of the Washington School parcel to C1 **OR** C2, and consider and discuss both versions.*

Questions/Comments from Council & Administration

The President asked the Solicitor to expand. The Solicitor commented on his concerns, adding that:

- * The west side of Lake Avenue is zoned C-1;
- * Across the street is Light Industrial;
- * Lake Avenue is the dividing line; and
- * C-2 is almost exclusively in our downtown area.

He said he raising the spot zoning issue because it is one of the things courts will look at if there is a serious challenge to a community zoning plan. "If you've got little island or you've made exceptions all over the map, and the exceptions are almost swallowing up the rule, then it looks as if your zoning is arbitrary and capricious. The courts can, in those circumstances, basically void the whole zoning scheme. This is why I recommended that the notice for today's hearing give council the alternative to consider either a C-1 or a C-2 change. (The Clerk took responsibility for not getting the Solicitor's clarification on his suggestion. The Solicitor agreed with the Clerk that had the notice of the public hearing, which had already gone out, been changed, the 30 days period would begin again with the added topic. The Solicitor apologized for his lack of clarity.) Because the notice was only to consider a change from C-1 & R-2 to C-2, that is all that could be considered this afternoon.

A few of the key points discussed, at this point, in the hearing were:

- * How to proceed;
- * Mr. Kister was thanked for the way he maintains his properties;
- * Bridge Street is zoned (H-1 – Harbor Historic District);

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- * Why C-2 requested (Mr. Kister said it has a few more allowable uses C-1 does not;
- * Mr. Kister said he would live next to any of his structures; and that he assures he would not comprise the area;
- * Council had to take into consideration that Mr. Kister may not always be the owner;
- * Grandfathering;
- * Conditional Use Permits, if granted, changes the stated use of a property and allows spot zoning; it was noted that it really does not because the type of business is a determining factor at the time of the Conditional Use Permit request;
- * Mr. Kister said he is reluctant to be open to C-1 zoning if C-2 is not approved because he would like to have more options;
- * Refer to Ashtabula City Planning Commission, for discussion and comment on amending the C-1 zoning to permit all C-2 permitted uses (leaving all other C-1 guidelines in place);
- * Clerk of Council was instructed to place 30 day notice in paper that C-1 rezoning would be considered; while at the same time refer the matter of C-1 zoning permitted uses be amended to include all C-2 permitted uses;
- * And the matter will be taken up at the newly scheduled public hearing

Questions/Comments from Visitors – None

Closing Remarks

The President thanked everyone for their participation. He announced that by law, Council is unable to take formal action at a public hearing, but that ordinances pertaining to the three vacate requests are scheduled to be voted on at this evening's Regular Council meeting.

Adjourn

Mr. Pugliese moved, Mr. Trisket seconded to adjourn the public hearing at 5:58 p.m.; motion CARRIED.

DATE APPROVED: December 17, 2012

ATTESTED BY: _____

**J. P. Ducro IV
President of Council**

ATTESTED BY: _____

**LaVette E. Hennigan, MMC
Clerk of Council**