

MEMORANDUM

TO: Mayor Brick
All of Council

FROM: Stephen L. Byron, Director of Law

DATE: January 26, 2009

SUBJECT: Concerns Raised in Letter to the Editor

Introduction

Mayor Brick asked me to address the concerns raised in Rick Subel's letter to the editor, which was published in the Chagrin Valley Times on January 22, 2009.

Not Rezoning

It is incorrect to assert that "the land on which the Bell Towers condominiums sit, the vacant land south of that across from the post office and the property known as the Walters Building on East Washington Street" is being "rezo[n]ed." No property is being rezoned. The issue on the ballot for February 3, 2009, will allow the land uses of those described properties to continue as permitted uses. They will not become nonconforming uses.

The voters of Chagrin Falls have a chance to vote on a text change to the zoning code which will add a permitted use within the Light Industrial District for developments which are three (3) acres or more. The permitted use would be a "mixed use development," which would allow the proposed Spillway project to occur on the old Ivex site. The Planning and Zoning Commission studied this issue carefully, and concluded that it is highly unlikely that any other property currently zoned for light industry would be used in the same fashion as the Ivex site. This is a result of the minimum acreage requirement, and the fact that most of the properties zoned for light industry are already developed.

Tax Increment Financing

While the Village has agreed to consider tax increment financing, the Village is not obligated to do so if the terms of the TIF are not acceptable to the Village. The precise terms of TIF will not be negotiated until the voters approve the zoning text change, noted above, because if the use is not approved it would be a waste of time and money to talk about how to finance a project that is not permitted under the current zoning code.

The Village will not be borrowing any money or extending any credit to private interests as a part of the TIF agreement. In preliminary discussions, Spillway was considering making a request for public financing, but that option was rejected in November. The public improvements necessary for the project are to be entirely privately financed, perhaps with the exception of the sidewalk improvements which may be done as an assessment against the Spillway property.

Tax increment financing allows a portion of the real estate taxes which would be levied on the improvements to a property to be directed to public improvements. A TIF is granted, every dollar in real estate taxes will be paid by Spillway either as taxes or to pay directly for public improvements.

Tax increment financing would result in an immediate increase the property tax dollars which are paid to the various taxing entities (e.g. the Village and the school district) over what is currently paid. Every dollar that is currently being paid in taxes on the property will continue to be paid, and there would be new taxes collected on twenty five percent (25%) of the increase in valuation that results from the Spillway project. The taxes that would be levied on the remaining seventy five percent (75%) increase in valuation are used to pay for the public improvements which are related to the project. This type of arrangement is quite common for redevelopment projects, which might not otherwise be done in the absence of a TIF. It is important to reiterate: the Village will not be incurring the debt and will merely serve as a conduit for the private financing of the project. After a specific period of time, likely ten (10) years, all of the taxing authorities, including the Village and the schools, will receive one hundred percent (100%) of the property taxes levied on the Spillway site.

Ownership of the Dam

The Village has been seeking funding to assist the property owner (previously Alcoa, now Spillway) to lower the dam on the Ivex property. The Ohio EPA has identified the dam as a high priority project, for safety reasons, and has agreed to provide grant money to do so. Spillway will be obligated to lower the dam, and the Village will serve as the conduit for EPA grant money that is only available to public agencies. It is possible that TIF money may be used to match and supplement the grant money, and if this is done, the Village may have to acquire some interest in the dam so that it qualifies as a “public improvement.” If this is done, there will be appropriate insurance and indemnification provided by Spillway to protect the Village. After the project is completed, ownership of the dam would revert back to Spillway, permanently, which will continue to bear all of the costs of maintenance, insurance, etc.

Projected Income Tax Revenues/Governmental Services

Based upon the estimated payroll identified in the development agreement, it is projected that the Spillway development will generate sixty five thousand dollars (\$65,000) per year in income taxes to be paid to the Village. There are no income tax revenues coming to the Village from the current use of the property, and development of the property as residential would not yield the

same revenues as the Spillway project. Additionally, commercial developments do not add students to the schools, so the project provides additional revenues to the schools without consuming services from the schools.

In addition to the income and property tax revenues, Spillway is paying the costs of the special election on February 3, 2009, and for the Village's professional services (legal and engineering).

Noise Limitation

The Village and the developer have agreed to site-specific noise limitations, and Marc Benson from Hamlet was instrumental in reaching the agreed level of noise that is permitted to be generated on the site. The limitation is contained in the development agreement, is legally enforceable and was designed to be easily enforceable with a handheld meter and tape measure. The new noise ordinance and development agreement will protect the neighborhood from unreasonable noise.

The Process and Cost/Benefit Analysis

The Village Council has held two (2) well attended town-hall type meetings to give Council the opportunity to listen to residents' concerns regarding the project, and to publicly share the details of the project as the Spillway group has developed them. The Planning and Zoning Commission has devoted many, many hours in multiple public meetings to the discussion of this project and has engaged the public in discussions regarding the issues identified above. The Mayor has held smaller meetings, and had numerous conversations with neighbors who live near the project, in order to hear their concerns. Many of the provisions in the development agreement would not be appropriate matters for regulation via zoning, but the developer, the Village and the neighbors worked together to reach a mutually beneficial agreement on how the former industrial site will be used by Spillway. None of the information contained in this memorandum is new, and all of it has been fully available on the Village's website. The process could not have been more transparent.

Council has analyzed the risks and rewards to the Village of the proposed project, and the majority has found the project to be vastly superior to the existing conditions of the property. It is certain that there will be further degradation to, or demolition of, the historically significant site if this project is not approved, and the Village will likely incur significant expenses in seeking to abate various nuisances that are developing on the property. Redevelopment of the site avoids those costs.

The decision is now up to the voters of Chagrin Falls to decide if they, too, are comfortable with the proposed Spillway project. It is hoped that their vote will be based on the very transparent presentation of the project which the Village government has facilitated.

Please let me know if any further information is required.