

MINUTES OF THE COMMITTEE OF THE WHOLE
June 24, 2019
Auditorium

Present: Councilmembers Anderson, George, Litten, O’Leary, O’Malley, Rader

Also Present: Assistant Law Director Jenn Swallow, City Planner Katelyn Milius, Mayor Summers, Finance Director Pae, Assistant Finance Director Schuster, Jim Wymer and David Swindell of WXZ Development, four members of the public, Deputy Clerk Lascu and Clerk Bach taking minutes

Call to Order: 6:02 p.m.

Motion by President O’Leary, seconded by Vice President Anderson to approve the minutes from the June 10th Committee of the Whole meeting.

Yeas: Anderson, George, O’Leary, O’Malley & Rader

Abstain: Litten

Motion passed. Minutes are approved.

ORDINANCE 09-19 - AN ORDINANCE to amend Section 1105.02 of the Zoning Code of the Codified Ordinances of the City of Lakewood by changing and revising the Zoning Map of the City with respect to certain property as set forth and described as 13900 Lake Avenue (PPN 312-05-011) from R1M (Single-Family Residential, Medium Density) to PD (Planned Development). (Placed on 1st reading and referred to Planning Commission/ABR 3/4/19; 2nd reading 3/18/19)

Director Sylvester provided a presentation in which he detailed the environmental problems at the former Marathon Gas Station site. The estimated cleanup costs are projected to be \$350,000. The estimate was put together as a result of several levels of investigation dating back to 2016. The City is proposing to provide \$100,000 reimbursement to the developers for their investment in remediating the site.

He explained that the developers are re-introducing a revised version of the Lake House Homes project to Planning Commission on July 2nd and laid out the full anticipated schedule which culminates in Council’s vote on the re-zoning proposal July 15th.

In response to a question by Vice President Anderson, the developers explained that the first environmental investigation in 2016 was initiated as a result of WXZ entering into a contingent agreement with the Schmitt family to acquire the property.

In response to a question by Councilmember O’Malley, Director Sylvester clarified that the City’s \$100,000 grant will not increase if the cost of remediation increases. The grant will only be provided when the developers receive an NFA (no further action) letter from the regulating

authority, BUSTR. The City's goal is to have the site fully remediated. It is estimated that the Lake House Homes will generate \$70,000 annually in taxes. Therefore, the return on investment to the community is expected to be 1.5 years.

In response to a question by President O'Leary, the developers explained that this site is different from a brownfields site because it is not abandoned and that accordingly BUSTR is the regulating authority.

In response to a question by Councilmember George, the developers remarked further regarding how they arrived at the \$350,000 estimate. The estimate includes the cost of all the investigations up to this point plus the cost to remove close, and empty tanks, remove concrete, remove contaminated soil and replace it with clean soil and to get the site up to grade.

The Committee discussed the presence of underground tanks at the site. There were three sets of historic tanks at the site. A fourth was added in the 1970s and a clean set was added in 1994 which are known to still exist there. It is possible but unlikely that historic tanks are still present on the site because there is not sufficient documentation to prove they were ever removed. It was clarified that the developer will bear the risk and expense of potentially having to clean up additional tanks and that the City's \$100,000 will only be provided after remediation is complete.

Mayor Summers provided his recollections of business practices at Marathon and other gas stations throughout the 1960s and 1970s before the public became more environmentally aware. He mentioned oil-soaked soil and washing chemicals into the storm sewer.

Director Sylvester announced that by the City providing \$100,000 toward the environmental clean-up, WXZ will likely be able to change its site plan from 5 to 4 homes and increase front and rear setbacks.

Mayor Summers endorsed the use of public funds for this project, stating that if environmental problems such as this can not be addressed by the private sector that the City is ultimately the responsible party. Leveraging \$100,000 prevents the City from having to potentially pay much more. He cited the example of the Hilliard Theater where the private owner failed to act and the City eventually had to spend \$900,000 to demolish it because it was a hazard.

President O'Leary expressed agreement with this approach.

The Committee discussed with the developer more details about the proposed changes to the site plan including the size of the setbacks. The reduction in homes from 5 to 4 will allow each home to increase in size.

Councilmember George stated that she is happy with the proposed changes and thinks this is a creative solution to address resident concerns.

In response to a Councilmember's question, the developers explained that the property currently remains in the name of Peter Schmitt. WXZ is scheduled to close on the property this Thursday.

Councilmember Anderson pointed out that WXZ is taking a risk in acquiring the property before the plans are approved and before Council agrees to the proposed \$100,000 grant.

Councilmember Anderson questioned why the Schmitt family did not attempt to clean up the site.

Mayor Summers explained that regulators have no interest in such issues until a property changes owner or use. He pointed out that banks will not loan money for any development on contaminated land due to the risk involved.

Councilmember Anderson stated that this is the best possible outcome for the property and that he is happy to consider providing the grant.

Director Sylvester clarified the nature of the City's contribution which is a one-time reimbursement tied to environmental remediation. No long-term tax abatement or TIF is being proposed. He explained that it is less expensive for the City to provide the cash upfront and to keep tax revenue streams open.

Councilmember O'Malley thanked the developers for the improved site plan and expressed agreement that first floor living is a much-needed housing product in Lakewood.

The Committee discussed with Director Sylvester how other neighboring communities are investing in similar projects with tax abatement and TIFs. It was noted that these incentives will require buy-in from the school system to be effective. The school system collects 67% of the property tax and the City's portion is only 16%.

WXZ expressed excitement about the project and working with the City.

President O'Leary thanked the developers and expressed enthusiasm for the release of the full amended site plan and discussion of it at the July 2nd Planning Commission meeting.

Committee of the Whole adjourned at 6:51 p.m.

**Former Lake Avenue Marathon
Environmental Summary
Committee of the Whole
June 24, 2019**

Beginning in 2016, in preparation for the proposed re-development of the Lake Avenue Marathon service station property, WXZ Development has conducted a series of Environmental Site Assessments as outlined below.

A Phase 1 Environmental Site Assessment was completed on October 31, 2016. The purpose of a Phase 1 is to identify recognized environmental conditions in connection with a property. The Phase 1 identified a Recognized Environmental Condition (REC) because of the historical use of the property since the 1930's as an auto filling/service station.

- Historically there were at least 3 separate sets of underground petroleum storage tanks which had no records of closure activities. In 1972 a 4th set of UST's was installed.
- A suspected release of petroleum related products was reported to BUSTR on January 7, 1993 after reports of vapors in nearby basements and in sewers. An underground storage tank assessment, removal and replacement occurred in 1994. BUSTR assigned a release for this incident and required a Tier 1 Source Investigation which was never completed and the release has been open since then.

A Tier 1 Source Investigation was completed on March 14, 2017. The investigation was requested by BUSTR to take current groundwater samples from existing monitoring wells related to the 1994 assessment that was never completed. Current groundwater analysis detected COC's.

A Limited Phase 2 Environmental Assessment was completed on June 13, 2017. The purpose of the Phase 2 was to identify the location of any Underground Storage Tanks on the property and to analyze potential soil and groundwater contamination for Chemicals of Concern (hazardous materials identified as having potential to cause concern). BUSTR establishes action levels for each COC based upon the intended use of the property.

- Ground Penetrating Survey results indicated that abandoned UST's remaining on the property were unlikely.
- Analysis of 13 soil boring samples detected levels of benzene, naphthalene and 1,2,4 – trimethylbenzene concentrations above action levels.
- Analysis of groundwater samples detected concentrations of benzene, naphthalene and 1,2,4- trimethylbenzene above action levels.

A Tier 1 Investigation Report was completed on November 14, 2018. The purpose of the Tier 1 was to define the limits of the soil and groundwater contamination to delineation action levels and to conduct a groundwater use assessment.

- Comprehensive soil and water sampling occurred beginning in May 2018 through October 2018.
- Action levels were developed using Soil Class 2 residential land use and groundwater considered as non-drinking water.
- Soil sampling results confirmed that contamination was delineated to BUSTR action levels for residential use.
- Water sampling results confirmed that contamination levels were below BUSTR action levels for non-drinking water.

A Tier 2 Evaluation was completed on May 22, 2019. The purpose of the Tier 2 was to develop soil to indoor air exposure pathways related to the contaminated soils. Findings from the Tier 2 testing and modeling determined that in order to meet the BUSTR soil to indoor air action level exceedance contaminated soils will need to be excavated and removed from the site for the planned re-development of the property.

Environmental remediation work at the site will focus on removing contaminated soils from the site to remove the risk potential from vapor intrusion to new or neighboring structures. Specifically, the goal is to reduce 1, 2, 4-Trimethylbenzene in soils below the BUSTR-defined action level. Additionally, removal of contaminated soils and import of clean fill will address other chemicals of concern that are currently present *below* mandated action levels as well.

The environmental remediation, testing, and reporting required to bring the site to compliance for residential re-use is estimated at \$350,000. The City of Lakewood will provide a rebate grant of \$100,000 to ensure that the site is brought into compliance for residential re-use. Rebate funds will be set aside and will be released when a No Further Action (NFA) letter is issued to the site by the Bureau of Underground Storage Tank Regulation (BUSTR).

The proposed development following the remediation of the site will transition the site from a heavy commercial use of a gas station and vehicle repair shop to four new homes, with first floor master suites, and an estimated \$70,000 annually in combined real estate and income tax generation. There is no tax abatement or other local incentives proposed as part of the project.