

February 26, 2009

Planning Commission

- 5:30 P.M.: Meet at the Norbert and Victoria Koehn property, 1936 South Green Road, regarding the proposed Conditional Use application for “Sanctuary on Green”
- 7:00 P.M.: Listen to January 25, 2007 audio tape of Professor Alan C. Weinstein
- 7:30 P.M.: Professor Alan C. Weinstein will address questions in regards to the zoning aspects and licensing for Adult Entertainment Businesses

5:30 P.M.: Meet at the Norbert and Victoria Koehn property, 1936 South Green Road, regarding the proposed Conditional Use application for “Sanctuary on Green” – Victoria, Norbert and Aaron Koehn and Melisa Feliciano gave a tour of the exterior area that surrounds the house and barn. Those present for the tour were: Commissioners; Chairman Arthur Goddard, Dennis Fiorelli and Ron Sabransky, Economic Development Director, A. Calisto Caminati, Jr., and Recording Secretary, Barbara Latini. Mrs. Koehn pointed out the properties surrounding theirs and the view of the wetlands. She stated that their property includes about three acres of land. She indicated where the proposed labyrinth, paths and greenhouse would be located. Everyone moved indoors for a presentation of the proposed Conditional Use application for “Sanctuary on Green”. Paul Kowalczyk, Building Commissioner arrived for the indoor presentation. The commissioners asked Mrs. Koehn questions and a discussion took place. Chairman Goddard gave his recommendations and asked Mrs. Koehn to submit her plans for the proposed Conditional Use permit.

Chairman Arthur Goddard called the meeting to order at 7:05 P.M. Members present: Dennis Fiorelli, Martin Gallito, Mary Doria Russell and Ron Sabransky. Also present: Paul Kowalczyk, Building Commissioner and A. Calisto Caminati, Jr., Economic Development Director.

7:05 P.M.: Listen to January 25, 2007 audio tape of Professor Alan C. Weinstein – Chairman Goddard played the audio tape for about 25 minutes from the January 25, 2007 Planning Commission Meeting that featured Professor Alan C. Weinstein speaking about Adult Entertainment Businesses.

7:35 P.M.: Professor Alan C. Weinstein will address questions in regards to the zoning aspects and licensing for Adult Entertainment Businesses – Chairman Goddard sent the prepared questions from Mr. Gallito and Mr. Fiorelli to Professor Weinstein previously so that he would be prepared to answer the questions in person. The body of the letter dated February 19, 2009 from Chairman Goddard is as follows:

During the process of researching the Sexually Oriented Business Legislation for the City of South Euclid, the Planning Commission has several questions and would like your legal opinion.

As a background to the questions below is the section of the South Euclid Ordinance that is at the core of the questions being asked.

Incompatibility with Other Uses. In order to protect minors, no adult bookstore, live adult entertainment establishment, adult motion picture theater or adult mini-motion picture theater shall be operated or located within 500 feet from an existing residential use or Residential Zoning District, or a public or private school, church, public library, playground, recreation or community center, child care institution or child day care home.

Proximity of Adult Entertainment Uses to Each Other. In addition to the above restrictions, in no event shall any two adult entertainment establishment uses, including live adult entertainment establishments, adult motion picture theater, adult mini-motion picture theaters and adult bookstores be within 1,000 feet of each other.

Continued, Planning Commission Minutes, February 26, 2009

*Finally, based upon the above restrictions a review was performed of the Zoning Map and determined that there would be **no** locations available for an adult entertainment business that would be 500 feet from an existing residential use or Residential Zoning District, or a public or private school, church, public library, playground, recreation or community center, child care institution or child day care home.*

Questions:

1. *Has there been any litigation at any level similar to South Euclid's situation, involving zoning / ordinance that allows NO available sites for adult entertainment businesses?*
2. *Considering the existence of State laws (e.g. 2007 Substitute Senate Bill – SB16 – State Issue 1) governing adult businesses, is it conceivable (or what would it take) that there could be a State / County law imposing the 500' restriction from residence, school, etc.?*
3. *If a suit were filed against the City of South Euclid would decision of the courts be in favor of the City of South Euclid or the plaintiff [Adult Entertainment Business]?*
4. *If in fact a suit were filed and the decision by the courts ruled against the City of South Euclid, would this permit the plaintiff to locate anywhere in the City of South Euclid?*
 - a. *More specifically there is a vacant property on Green Road that abuts St. Gregory's Church and school, if an adult entertainment businesses desired this specific location, under the current ordinance and the result in the above question, could the adult entertainment business locate on this property?*
5. *If the City's decision is not to take an action regarding the Adult Entertainment Business Ordinance and if a suit is filed, could the City attempt to settle it prior to going to the Court?*
 - a. *What are the possible outcomes, if the City attempts to settle the potential lawsuit?*
 - b. *What would be the City exposure to this type of approach, both in the settlement of the specific suit and any future suits?*
6. *Insofar as the government has an interest to address the negative secondary effects of the Adult Entertainment Business, what is the feasibility of a tax to be imposed upon the Adult Entertainment Business to only cover the necessary additional police enforcement effort?*

Professor Weinstein answered all the written questions and other questions from the commissioners regarding the zoning aspects and licensing for Adult Entertainment Businesses.

Chairman Goddard made a motion to approve the minutes of February 12, 2009. Seconded by Ms. Russell. All ayes. Minutes approved. (5-0-0)

Chairman Goddard made a motion to adjourn the meeting. Seconded by Mr. Gallito. All ayes. The meeting adjourned at 9:00 P.M.

Arthur Goddard, Chairman

Date

Barbara Latini, Recording Secretary