

# VILLAGE OF BOLIVAR REZONING HEARING FEBRUARY 17, 2014

The Bolivar Village Council met in a special session of Council for the purpose of a rezoning hearing on **Monday, February 17, 2014**. Mayor Hubble called the meeting to order at 7:01 p.m. Cochran, Lang, Lloyd, Marburger, Slutz & Vincent all answered roll call.

The Mayor began by stating the purpose of the Public Hearing. William and Barbara Brie (Sexton) Russman have requested a zoning change of their property from Residential to Commercial. The Mayor opened the floor to public comments, beginning with Dwayne Flickinger.

Dwayne stated he is interested in hearing more about the proposal at this point. He also wanted to go on record stating he is opposing any zoning change from residential to commercial.

Attorney Daisher interjected that actually it makes sense to allow the person petitioning the rezoning to speak first.

William (Will) Russman stated their property is at 464 Park Avenue which is the Welcome to Bolivar sign at the three-way stop. The brand new gas station is being built across from their home. Previously the property across from them was residential. The main entrance to the gas station is going to be in front of their property and he feels their home is no longer suitable to raise their family.

He currently runs a business in the Village of Bolivar. The appearance of their residential property would not become a commercial lot. The home will become an office area and showroom piece and the garage will be for storage and vehicles. By no means will it be a warehouse lot. We take pride in what we do. Everyone can see what we have done already. The architecture of everything we have done at our property is a show piece for what we do for a living.

Flickinger interjected he does not want to see spot zoning in the community. Will stated the entrance of the town is no longer a residential area. The traffic does not make it safe for kids for a residential area. Flickinger suggested fencing his yard. There was a brief debate between the two gentlemen.

Will said he understands spot zoning, but he is not in the middle of a "neighborhood" to be considered as spot zoning.

Mayor Hubble called on Michelle Crowe to address any concerns she may have. Mrs. Crowe stated she is very concerned about the rezoning. She said she does not have a problem if they wanted to put offices there, but has a problem with the Russman's rezoning it to commercial. She stated she has done some research and it will kill her property value. She thinks it's bad enough a gas station is going to go in but then with the trail that went in that cost over 300,000.00 she questioned who would want to walk down a trail with everything commercial.

Flickinger interjected there are several communities that have zoning and some don't. New Philadelphia butchered their zoning. He said zoning is supposed to be here for our protection. He would feel more comfortable with a variance.

Attorney Daisher said she has researched the rezoning issue and wanted to clarify the actual definition of spot zoning. The highest and best use should be considered when making a zoning decision. The second question posed to her is if conditions can be placed on the rezoning; and the answer is yes. Attorney Daisher laid out options for council whether it is a variance or a rezoning. Variances however have various issues that could potentially be challenged in court. Council needs to be aware of their options. There are variances, rezoning's, conditional uses, nonconforming uses, etc. that can be granted by municipalities. If the zoning is denied, there are other options to apply for.

Additional questions of clarification and discussion took place amongst council and solicitor. Lang questioned if variances could be challenged in court at a later point. Attorney Daisher stated if the rezoning was denied, the applicant would need to request a variance. Lang asked if conditions were placed on the zoning, could it be upheld in court. Daisher stated we are on good ground as far as the courts are concerned.

Mayor Hubble asked Dick Lebold if he would like to say anything. Lebold said as the President of Zoning he would like to speak. First of all the zoning board tries to look at things with a much broader picture of what the future holds. The zoning board likes our little town, however, the zoning board doesn't feel everything is going to stay the same forever. It will either move forward or go in reverse. Lebold said it's a busy intersection with heavy truck traffic. There is a sign directing trucks to the South verses sending them through Bolivar.

Over the years, there have been many conversations as to whether the three-way should have been a four-way. "It probably should have happened, but it didn't". The success of getting something done or not getting something done is in how you approach the people. Eventually it will probably happen to alleviate the traffic. "The intersection lends itself to commercial development".

Discussions took place between Flickinger and Lebold. The planning commission and zoning board truly feel allowing this zoning change will be the proper order of development and gives control as to what is going to happen there and will allow the Village of Bolivar an opportunity to develop it. Lebold discussed the surrounding lands to the Russman property.

The zoning commission is looking very closely at the zoning book. The categories in the zoning book are probably going to be changed and tightened up.

Lebold said the village will have a very nice structure across the street from the Bellstore. He continued to say if it weren't for the Russman's and the lady that bought the clinic, we wouldn't have such a nice entrance at the three-way. For these reasons is why the Zoning Board referred the zoning change to Council to ask for their approval.

Marburger feels the request is reasonable and is in line with all the changes across from their property. He suggested as a peace offering, some language in the rezoning that would maintain the residential appearance of the property as it is now, which it sounds like that is the plan.

Slutz asked if anyone could live in a commercial property. Attorney Daisher responded, yes you can. Every higher use includes the lower use of zoning.

Slutz felt the Ordinance covers a lot of the issues being raised. Daisher read some highlights of the ordinance.

Russman wanted to clarify the conditions on the zoning. He said he is willing to comply with the newest edition of the zoning book. "We will comply with all the commercial zoning conditions". Discussions took place between Will and Attorney Daisher.

Attorney Daisher read the proposed zoning ordinance in its entirety. (Refer to Ordinance O-87-2014) Daisher asked Council if they had any questions, comments, additions or subtractions.

Continued comments took place amongst council and the attending guests. Marburger asked if the rezoning could be tied to the owner of the property. Daisher said no, that would be a variance.

Russman stated we wouldn't be in this position right now if the gas station wasn't built. Crowe interjected that was a concern of theirs as well. She just wants to enjoy her home and is concerned about a commercial use.

Flickinger asked, if this property is rezoned, what is to stop someone on Bolivar Street from doing the same thing. He again referred to spot zoning. Attorney Daisher defined spot zoning and how it would impact the overall feel of the neighborhood and traffic flow.

Mayor Hubble said the area through there lends itself to be a commercial area.

Michelle Crowe asked if the property becomes commercial, will it have an impact on the farm property. Daisher said there are never any guarantees. If the owner of the farm property applied for a rezoning it would have to go through the board.

The Mayor asked if there were any others questions. She said she understands Crowes and Flickingers perspective. She went on to clarify how the Bellstore got here and how Mr. Angel sold the property to the Bellstores. Hubble stated, "The Village had nothing to do with that".

Flickinger asked if the Russman's planned on adding on to their business. Will said they may add an out building in the future, but it would depend on the space he would have behind the footprint of the house.

Russman said the hours of operation would start around 7am; crews would be dispatched to job site and return around 6 or 7pm. They work from sun up to sun down on kitchen, bath remodels, counters and some crews work on cell phone towers.

The largest truck would be a 26' flatbed and does not require a CDL license. The bulk of truck traffic would be from freight for deliveries. The trucks will be during business hours. They will pull off the road onto his property to load/unload which takes approximately ten (10) minutes.

Brie Russman interjected, they want the property to look like a home.

Flickinger asked about the sign; if it has to comply with zoning? Attorney Daisher stated it would have to comply with the residential area.

Council openly discussed the options; everyone was fine with waiting until the March 3 meeting. Discussion continued. Slutz stated he didn't have a problem with the wording of the Ordinance.

Slutz motioned, seconded by Vincent to suspend the rules for **AN ORDINANCE PROVIDING FOR THE REZONING OF 464 PARK AVENUE SW IN THE VILLAGE OF BOLIVAR; ESTABLISHING AN EMERGENCY**. All members present voted yes in a roll call vote. Slutz motioned, seconded by Vincent to pass **Ordinance O-87-2014** as an emergency. In a roll call vote, Cochran, Lloyd, Marburger, Slutz and Vincent voted yes; Lang voted no.

There being no further business, Lang moved, seconded by Marburger to adjourn until March 3, 2014. In a roll call vote, all members voted yes. The meeting adjourned at 7:54 p.m.

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Mayor Rebecca S. Hubble

ATTEST: \_\_\_\_\_  
Maria A. App, Clerk Treasurer

Approved: \_\_\_\_\_, 2014