

North Canton City Council  
Community and Economic Development Committee

Ordinance No. 60 - 2015

An ordinance providing that, upon a close review of the entire record, North Canton City Council finds the Planning Commission's decision to approve a conditional use permit for the Hoover District South Parking Lot was not unconstitutional, illegal, arbitrary, capricious, or unreasonable, and was supported by a preponderance of substantial, reliable and probative evidence on the entire record. Therefore, Council affirms the Planning Commission's decision to approve the permit.

WHEREAS, Rosie Angelo, Michael Angelo, Clara Draper, Paula Blane, Deborah Patterson, Lyssa Darrah, Jeffrey Darrah, Thomas Hammen, Linda Hammen, Kelly Beck-Powell, Rita Palmer, Gretchen Bencan, Melanie Roll, James Blaine, Maria Harris, Charles Osborne, and Norma Boscia, (collectively, the "Applicants"), appealed to City Council the Planning Commission's approval of a Conditional Use Permit, Hoover District South Parking Lot, PC403-14CU, (the "Permit");

WHEREAS, North Canton City Council enacted Resolution 2-2015, finding and stating therein, that after its analysis of the entire record, it determined the Applicants failed to demonstrate standing to appeal the Planning Commission's decision, and therefore, Council denied the appeal;

WHEREAS, Appellants Maria Harris, Rita Palmer, and Charles Osborne filed an administrative appeal with the Stark County Court of Common Pleas, 2015CV00824, which North Canton moved to dismiss for lack of standing under Chapter 2506 of the Revised Code, failure to exhaust administrative remedies, and failure to demonstrate actual harm;

WHEREAS, the Court found neither Council nor the Zoning and Building Standards Board of Appeals ("ZBOA") approved or affirmed the Permit, so an appeal of the Permit was not properly before the Court; however, unlike with similar use permit applications, where the Planning Commission forwards its recommendation to Council for consideration, in North Canton, the Planning Commission possesses sole authority to approve conditional use permits; neither Council nor the ZBOA approves conditional use permits. NC Ords. 1177.06, 1177.09, and 1177.10;

WHEREAS, although the Court found Chapter 2506 of the Revised Code and Ohio's common-law rules regarding standing apply only to *courts*, North Canton established, through its Charter, all of the powers of local self-government and home rule, and all powers possible for a municipality to have under the Constitution of the State of Ohio, and therefore, possesses the legal authority to establish ordinances dealing with matters of local concern, such as zoning;

WHEREAS, although North Canton's Charter provides that "[i]t shall be the duty of the Zoning and Building Standards Board of Appeals to hear and decide appeals for exceptions to and variations in the application of ordinances \* \* \*," and provides no legal authority for Council to hear such appeals, and the Supreme Court of Ohio, the Fifth District Court of Appeals, and the Stark County Court of Common Pleas have each held that an ordinance contrary to its municipal charter is void *ab initio*, the Court reversed Council's decision to deny Appellants' appeal and remanded the matter to North Canton City Council for full consideration of and hearing on Appellants' appeal;

WHEREAS, proceeding with its objections that the City has the right to determine standing to appeal the decisions of its administrative agencies, and that its Charter requires such appeals be heard by the ZBOA, Council provided Appellants full consideration and hearing on their Appeal;

WHEREAS, Council scheduled and provided proper notice to Appellants of its public meeting to hear Appellants' appeal;

WHEREAS, seven of the original Appellants, Draper, Roll, Osborne, Bencan, Palmer, Blaine, and Harris, appeared at the hearing and addressed Council with their concerns;

WHEREAS, Thomas and Linda Hammen did not appear at the appeal hearing, but had a letter hand-delivered to Council during the hearing;

WHEREAS, following Appellants' comments, Council heard responsive comments from and posed questions to the City's engineer, James Benekos, regarding the Planning Commission's hearings, Applicant's testimony, reports and exhibits in the record, and Appellants' comments;

WHEREAS, Council analyzed the entire record of this matter, including the Applicant's application and Appellants' brief, the meeting minutes of each of the Planning Commission's public hearings, together with the exhibits provided to the Planning Commission and Council;

WHEREAS, in determining whether the Planning Commission's decision was supported by reliable, probative, and substantial evidence, Council must give due deference to the Planning Commission's resolution of conflicting evidence, because as the original factfinder in this matter, it had the opportunity to observe the demeanor of those offering evidence and weigh their credibility;

WHEREAS, upon analyzing Appellants' brief to Council, which contains approximately 57 issues on appeal, together with the issues Appellants raised at the Planning Commission's two public hearings, it is patently clear the vast majority of issues raised on appeal were not presented to the Planning Commission during its hearings, and therefore, those issues are not preserved for appeal; nevertheless, even when examining each of the issues raised on appeal, it is just as clear the Planning Commission's decision to approve the Permit was in compliance with applicable North Canton codified ordinances, and was based upon the preponderance of substantial, reliable and probative evidence on the whole record;

WHEREAS, despite Appellants' brief listing approximately 57 errors on appeal, collectively, Appellants raised eight issues for the Planning Commission to consider during its two public hearings and for Council to consider at the appeal hearing; those eight issues are: concerns about not being told what to expect with construction; mines/safety; tree buffer; property value; storm water runoff; enjoyment of property; new lighting; and increased traffic;

WHEREAS, the record is replete with evidence of the Planning Commission listening to concerns, discussing, debating, and analyzing comments, exhibits, studies and reports from the Applicant and Appellants, the Ohio Environmental Protection Agency, and the Stark Soil & Water Conservation District regarding storm water runoff, together with a report from an engineering firm that drilled geological test holes for field exploration to ensure the soil would support the planned improvements; and what is even more compelling evidence of the Planning Commission's due diligence, it tabled the matter for four months after demanding the Applicant provide it with improved plans, together with suggesting things not required for the Permit's approval, such as how to be a good neighbor and help allay the residents' fear and concerns of the proposed construction, and suggesting the Applicant provide public informational meetings with drawings and renditions of the proposed plans, providing experts to answer questions, along with private meetings with residents, and more substantively, the Planning Commission required the Applicant to complete major revisions to the original plans—all of which the Applicant completed before returning for a second public hearing;

WHEREAS, upon review of the entire record in this matter, Council finds the Planning Commission's decision in granting the requested conditional use permit, PC403-14CU, fully addressed Appellants' errors on appeal and the applicable North Canton codified ordinances, was not unconstitutional, illegal, arbitrary, capricious, unreasonable, and was supported by the preponderance of substantial, reliable and probative evidence on the whole record. Therefore, Council affirms the Planning Commission's decision to award the Permit.

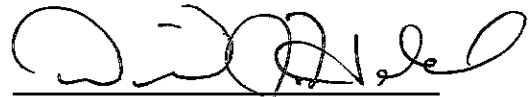
**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NORTH CANTON, COUNTY OF STARK, AND STATE OF OHIO:**

Section 1. That although City Council believes the City's Charter does not permit it to hear the appeal of the Planning Commission's decision to approve the conditional use permit, Hoover District South Parking Lot, PC403-14CU, and that even if it did, Appellants lack standing to appeal under Ohio Revised Code Section 2506 and Ohio common law interpreting that chapter, and that despite these objections, Council followed the Stark County Court of Common Pleas' order and provided

Appellants full consideration of and hearing on said appeal, thereby affording them a third opportunity to publicly address their concerns regarding the Permit.

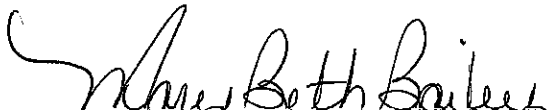
- Section 2. That North Canton' Charter provides that neither City Council nor the ZBOA possesses the authority to approve conditional use permits and that such authority rests solely with the Planning Commission.
- Section 3. That Appellants raised numerous errors on appeal they had not raised to the Planning Commission during its two public hearings regarding the Permit, and therefore those issues were not preserved for appeal to Council.
- Section 4. That despite Appellants' alleged 57 errors contained in their brief to Council, and that most were not preserved for appeal, collectively, Appellants raised eight issues for the Planning Commission to consider at its two public hearings and for Council to consider at the appeal hearing.
- Section 5. That even when examining all of Appellants' issues raised on appeal, and providing due deference to the Planning Commission's decision, as it must, it is clear its decision to approve the Permit was based upon the preponderance of substantial, reliable and probative evidence on the whole record, and in accordance with applicable North Canton's codified ordinances, and was not unconstitutional, illegal, arbitrary, capricious, or unreasonable. Therefore, Council affirms the Planning Commission's decision to award the Permit
- Section 6. That if a provision of this ordinance is or becomes illegal, invalid, or unenforceable, that shall not affect the validity or enforceability of any other provision of this ordinance.
- Section 7. That this ordinance shall take effect and be in full force from and after the earliest period allowed by law.

Passed in Council this 9<sup>th</sup> day of November, 2015

  
David Held, Mayor

Signed: 11/09, 2015

ATTEST:

  
Mary Beth Bailey, Clerk of Council