

PROCEEDINGS OF THE CITY COMMISSION
CITY OF EAST GRAND RAPIDS

Regular Meeting Held June 3, 2019

Mayor Seibold announced that the City Commission was livestreaming the commission meeting on Facebook and welcomed everyone watching the livestream.

Mayor Seibold then called the meeting to order at 6:01 p.m. in the City Commission Chambers at the East Grand Rapids Community Center and led the audience in the Pledge of Allegiance.

Present: Commissioners Duncan, Favale, Hamrick, Miller, Walters, Zagel and Mayor Seibold

Absent: None

Also Present: Assistant City Attorney Tobias; Interim City Manager LaFave; Parks & Recreation Director Bunn; City Clerk Brower; Captain Buikema; Zoning Administrator Mizikar; Special Counsel Wardrop

2019-84. No public comment was received.

2019-85. Commissioners Miller, Walters, Hamrick, Favale, Zagel and Duncan expressed support for the livestreaming effort and hoped residents would benefit from the real-time look into the matters discussed at these meetings.

Commissioner Miller reminded everyone to drive carefully now that school was letting out for the summer and kids are playing outside more.

Commissioner Favale announced the EGR Schools Foundation's Now & Forever campaign had raised nearly \$6 million and reminded everyone to donate if they hadn't already done so. She also congratulated students and staff on the completion of another successful school year.

Commissioner Zagel reminded everyone of the June 10 Traffic Education & Information meeting and the Parks & Recreation Master Plan Input Session being held at the community center. He also invited everyone to the concert at John Collins Park that same evening.

2019-86. A zoning variance hearing was held regarding the request of Philip & Elizabeth Skaggs of 2615 Hall to allow a 6' privacy fence to remain within 1' of the property line rather than the 3' height maximum allowed within 10' of the property line, and to allow the 6' privacy fence to remain within the 20' x 20' clear vision triangle at the base of the driveway.

Zoning Administrator Mizikar outlined the request to allow the fence to remain in the non-conforming location and reviewed the setback that would meet the ordinance requirements. He noted that a fence around a pool was required to be at least 4' tall but does not have to be opaque. The fence ordinance requires that 6' fences be located 10' from the property line.

Mayor Seibold noted that the fence ordinance adopted in 2014 required a 20' setback from the property line, which was changed to a 10' setback requirement in 2018. She further noted that Mr. and Mrs. Skaggs were given multiple setback and angling options in October but had chosen to go forward with the request to leave the fence at 1' from the property line.

Elizabeth Skaggs, 2615 Hall, stated they had changed their request by angling the corner of the fence to allow for line of sight along the sidewalk while still providing privacy in their back yard. She stated a 6' fence along the sidewalk is essential for them and requested relief from the 20' clear vision triangle requirement. She spoke extensively about the need for a 6' fence so that children would not be able to see their pool or climb their fence to get to the pool. She understood the need for a clear vision area but stated they could not do this on their lot. She then showed photos of a vehicle in their driveway from various spots along the street with a corner of their fence removed and angled. Mrs. Skaggs stated they meet all the conditions of the ordinance to receive a

variance as the placement of the pool is not their fault and would not cause detriment to the neighbors as the fence was in the same place as the prior fence. She reported that 100% of their neighbors are in favor of this fence and they would continue to fight for a 6' fence due to safety and privacy concerns.

Phillip Skaggs, 2615 Hall, stated staff had refused to approve his proposed solution to the issue and had instead sent the matter to the commission. He reiterated that the entire neighborhood supports this fence and showed pages with signatures to that effect and referenced emails sent on their behalf by people who understand the situation better. He cautioned the commission not to "fly in the face" of such neighborhood support. Mr. Skaggs stated that safety is their overwhelming reason for needing a 6' fence along the sidewalk. He stated it would be impossible to build a fence at the required setback as there would be only 14" at the end of the pool and they would have to tear down the garage to fully meet the clear vision requirement. He blamed the confusing wording of the ordinance, several city employees and the lack of a fence permit process for the entire situation. He stated his family was not given the information or help they needed. He felt the examples cited in the materials were irrelevant as those homes did not have pools. He showed several photos of fences in the city that he did not feel met past or present ordinances and accused staff of erratic and capricious enforcement. He concluded that his fence was not a safety issue as pedestrians had plenty of time to stop if they see a car backing out.

Mayor Seibold opened a public hearing. The following people were present to express their opinions:

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| - Christopher Yates, 2622 Hall | Fence has been there for years and neighbors feel safety is not an issue. Warned the city would likely not prevail in court since there had been no effort to compromise with the Skaggs. Stated neighbors would be upset if this is denied. |
| - Britt Campbell, 1137 Conlon | Stated her children would climb the fence if they could see the pool. Sight distance isn't an issue because the driveway is so short. |
| - Matt Steketee, 2635 Hall | Didn't understand the clear vision requirement and Skaggs fence is not an issue, especially if the is corner angled. |
| - Bob Milanowski, 2640 Hall | Skaggs fence is reasonable and not a problem. |

The following communications were received at City Hall concerning this variance request:

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| - Nicholas Krupansky, 2450 Maplewood | Opposed. |
| - Elizabeth & Omar Flores | In Favor. |
| - Lindsay Snyder, 2645 Hall | In Favor. |
| - Lee Hegstrand, 1125 Conlon | In Favor. |
| - Jackie Deane, 1119 Conlon | In Favor. |
| - Alissa Adams, 1160 Conlon | In Favor. |

No other public comment was received. Mayor Seibold closed the public hearing.

Assistant City Attorney Tobias introduced Thomas "Mac" Wardrop as special counsel for issues pertaining to the variance submitted by Mr. and Mrs. Skaggs. Mr. Tobias noted that Varnum is not representing the city in this instance because of the conflict of interest with Mrs. Skaggs being a shareholder at Varnum.

2019-086-A. Miller-Hamrick. That the request of Philip & Elizabeth Skaggs of 2615 Hall to allow a 6' opaque privacy fence to remain within 1' of the property line rather than the 3' height maximum allowed within 10' of the property line be approved.

Special Counsel Wardrop advised the commission should not consider the prior fence as part of its discussion and decision on the current fence request. He stated that a regulatory ordinance such as the fence ordinance is not encumbered by the prior non-conforming use provisions of the zoning ordinance.

Zoning Administrator Mizikar clarified that a 6' fence would be allowed along the property line or in the clear vision area if it were a see-through material such as chain link or wrought iron. A variance is required for this fence because it is a solid wood privacy fence.

Mayor Seibold asked whether staff had worked with Mr. and Mrs. Skaggs to understand their options. Interim City Manager LaFave stated that staff had outlined many alternatives but had informed the applicants that only the city commission had the authority to approve any of those alternatives. Mr. LaFave noted that Mr. Skaggs had decided to move forward with the current request.

Commissioner Miller felt the presence of a pool in the Skaggs yard made the situation somewhat unique; however, he viewed this more of a replacement for what had been there before and not as a clean slate replacement. Mr. Miller also stated that this fence would help the neighbors and not present a detriment as it was better than what was there before. He felt the new permit system would eliminate these types of problems in the future.

Commissioner Zagel questioned how the Infrastructure developed the purpose statement in the ordinance and what the term "openness" meant in this case. Commissioner Miller stated that openness would be a factor in clean slate situations, but he felt this fence did promote openness with the angled corner. He noted there were a lot of non-compliant fences in the city but the new permit process would prevent more from being built so he was not worried about setting a precedent with this variance.

Commissioner Zagel agreed on the need for safety and the desire for privacy in your backyard but felt there were lots of options to achieve this that don't require variances. He reminded everyone that over the last few years, the commission had required several people to either tear down existing fences or to revise their plans for fences because of the fence ordinance requirements. Mr. Zagel stated that being able to afford a pool in your back yard does not give you a right to more privacy than others who don't have a pool. He reiterated that there were other options for this fence and the rules should be fairly applied to all.

Mayor Seibold showed photos of her car in the Skaggs driveway and noted that while the angled corner provided some visibility when cars were in the south side of the driveway, a car in the north side of the driveway would be across the sidewalk before the driver could see a pedestrian or bicycle on the sidewalk.

Commissioner Hamrick felt the commission should look at this request with a spirit of compromise since the applicants were confused by the ordinances and at a disadvantage because there was no fence permit process. She noted she thought this property met the standards for a variance because the pool makes the property unique and takes up the entire yard and this situation existed for many years. She further noted that the fence would not be a detriment to the neighborhood because it had always been in the same location. She suggested adding a condition that a convex mirror be attached to the fence to assist both cars and vehicles in seeing better at this driveway.

Commissioner Duncan believed the new fence was an improvement. She stated this was the same result as if the Skaggs had just replaced 50% of the fence each year as allowed by ordinance. She didn't feel a see-through fence was an option and that the Skaggs had spent enough time dealing with this issue; therefore, she would be supporting the request.

Commissioner Favale felt the variance standards were met because the pool and patio take up most of the yard, making this property different than the others where variances were not granted. She noted the applicants were initially given verbal approval by city staff but had changed their project to alleviate the commission's concerns. She felt imposing a 20'x20' clear vision area would place an unnecessary burden on this family, so she would support both requests.

Mayor Seibold stated that both staff and the commission had given the Skaggs multiple ways to avoid a variance or seek a lesser variance than 1' from the property line. She noted Mr. Skaggs was on the commission when the 2014 version of the fence ordinance was adopted so he should have been familiar with the fact there were setback requirements. She agreed with the Skaggs that safety was paramount in this situation but felt the current fence—even with the angled corner—was not safe for people on the sidewalk. She reiterated that other variance applicants have had to take down existing fences or change their plans. She noted her pool, fence and

driveway were almost identical to this situation, so it was not unique in the challenges presented by maintaining an aging fence or desiring privacy. She felt at the very least there should be some type of compromise to move the fence farther from the sidewalk to improve sight distance and still allow some privacy in the back yard.

Commissioner Walters stated he would be abstaining from voting on this issue due to the appearance of the conflict with Mrs. Skaggs being his business partner. He stated that while Varnum does have a conflict since they are giving the city legal advice, he did not feel that he had a conflict of interest because he was a resident elected as a city commissioner and was not acting as an attorney. He further noted that he reviewed the city's Conflict of Interest Policy and did not feel that the policy required him to abstain either. He stated he would not gain anything from voting on the variance, but he preferred not to vote to avoid the appearance of a conflict. He stated that he had decided he would participate in this and other votes involving potential conflicts only if needed to resolve a deadlock or provide a quorum. Mr. Walters noted that he had listened to the discussion to determine the direction of the vote and then decided he would not vote on these requests.

Yeas: Duncan, Favale, Hamrick and Miller – 4
Nays: Zagel and Seibold – 2
Abstain: Walters –1

2019-086-B. Miller-Favale. That the request of Philip & Elizabeth Skaggs of 2615 Hall to allow the 6' privacy fence to remain within the 20' x 20' clear vision triangle at the base of the driveway be approved.

Commissioner Miller noted that while this fence was an improvement, it was not an ideal situation for the clear vision requirement. He believed the small lot, pool and corner lot created a unique situation, so the ordinance standards were met.

Mayor Seibold did not feel the small section of angled corner made the situation safe for pedestrians.

Yeas: Duncan, Favale, Hamrick and Miller – 4
Nays: Zagel and Seibold – 2
Abstain: Walters –1

2019-086-C. Zagel-Favale. Motion to direct the Infrastructure Committee to review the fence ordinance provisions regarding pools and corner lots and report back to the City Commission with options for amendments to address the above decisions.

Yeas: Duncan, Favale, Hamrick, Miller, Walters, Zagel and Seibold – 7
Nays: -0-

2019-87. A public hearing was held pertaining to the General Fund budget and the property tax levy for Fiscal Year 2019-20. No public comment was received. Mayor Seibold closed the public hearing.

2019-88. A public hearing was held on the special assessment roll of delinquent accounts for placement on the July 1, 2019 tax roll. No public comment was received. Mayor Seibold closed the public hearing.

2019-088-A. Walters-Duncan. That the special assessment roll of delinquent accounts totaling \$50,711.97 be certified and placed on the July 1, 2019 tax roll.

Yeas: Duncan, Favale, Hamrick, Miller, Walters, Zagel and Seibold – 7
Nays: -0-

2019-89. Gaslight Village wayfinding signage.

Interim City Manager LaFave reviewed the proposals for new wayfinding signs surrounding Gaslight Village and outlined the cost of each option.

Commissioners Duncan and Favale spoke in favor of the oval design.

Commissioner Miller suggested using the rectangular design since it was less expensive, and the Gaslight Village Business Association had expressed no preference for either design.

2019-089-A. Duncan-Favale. That the oval signage proposal from Postema Signs and Graphics of Grand Rapids be awarded in the amount of \$11,750, to approve a contract with West Michigan Lighting in the amount of \$6,900 for decorate poles for the new signs, and to approve the locations suggested by the Interim City Manager.

Yeas: Duncan, Favale, Hamrick, Miller, Walters, Zagel and Seibold – 7
Nays: -0-

2019-90. Duncan-Favale. To approve the consent agenda as follows:

2019-090-A. Minutes of the regular meeting held May 20, 2019.

2019-090-B. Payroll disbursements of \$231,820.92; county and school disbursements of \$-0-, and total remaining disbursements of \$173,994.60.

2019-090-C. Quarterly financial reports for the quarter ended March 31, 2019.

2019-090-D. A contract with the Michigan Municipal League Liability and Property Pool in the amount of \$173,240.00 for property and liability insurance for the period July 1, 2019 through June 30, 2020.

2019-090-E. Vehicle and equipment replacement purchases from various companies as outlined in the Interim City Manager's memo dated May 8, 2019.

2019-090-F. The appointment of Doug LaFave to the Grand Valley Metro Council Board and the Kent County Emergency Medical Services Consortium for the duration of his role as the Interim City Manager.

2019-090-G. Preliminary minutes of the Planning Commission meeting held April 9, 2019.

2019-090-H. Preliminary minutes of the Parks & Recreation Commission meeting held May 13, 2019.

Yeas: Duncan, Favale, Hamrick, Miller, Walters, Zagel and Seibold – 7
Nays: -0-

The meeting adjourned at 8:14 p.m., subject to the call of the Mayor until June 17, 2019.

Karen K. Brower, City Clerk