

THE CITY OF PARMA HEIGHTS  
SPECIAL COUNCIL MEETING MINUTES  
JANUARY 20, 2021

PRESENT: Council President Gallo, Council Members Stavole, Walsh, Danczak, Everett, Rounds Haase and Clerk of Council Bohdan

ALSO PRESENT: Mayor Byrne and Director of Law Pokorny

ALSO PRESENT: Kris Hopkins, CT Consultants

The meeting was called to order by Council President Gallo at 7:02 p.m.

Pledge of Allegiance.

Council President Gallo stated there will be a discussion and review of comments from the public for the proposed zoning updates and asked Director Pokorny to begin.

Director Pokorny explained that Kris Hopkins is present to answer any questions that Council may have regarding the proposed zoning updates. Director Pokorny referred to a memo he sent Council on January 12, 2021 that contained comments received by the Planning Commission either prior to or on the date of their December 14, 2020 meeting. Director Pokorny stated that he would read the names and the date of the record for the minutes. The comments will be attached to the Planning Commission minutes as well as this evening's Council meeting minutes. (comments are attached) Director Pokorny explained that today prior to this meeting, we received comments from Chris Ingram, Vorys, Sater, Seymour and Pease LLP, registering the opposition to the proposed Land Use/Rezoning Amendments to the Codified Ordinances on behalf of his client BayMark Health Services of Ohio. Director Pokorny asked Council to review the comments in advance of Council's January 25, 2021 meeting which there will be a Public Hearing regarding the proposed zoning updates. Director Pokorny stated if we received any comments through the YouTube Chatbox during this meeting, I will inform Council.

Councilwoman Walsh stated she would like to thank the residents who sent the e-mails and took the time to review the zoning code ordinances. She believes the changes that we are making will revoke some of the things they are asking for.

Councilman Stavole motioned seconded by Councilwoman Everett to adjourn to Executive Session to discuss pending litigation.

Aye: Danczak, Everett, Gallo, Rounds, Haase, Stavole and Walsh

Nay: None

**COUNCIL ADJOURNS TO EXECUTIVE SESSION AT 7:10 P.M.**

Council reconvenes at 8:32 p.m.

Director Pokorny stated he has checked and there were no comments received in the Chatbox while Council was in Executive Session.

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Councilman Stavole motioned seconded by Councilwoman Everett to adjourn the meeting.

Aye: Everett, Gallo, Rounds, Haase, Stavole, Walsh and Danczak

Nay: None

**Meeting adjourned at 8:33 p.m.**



Florence A. Bohdan  
Clerk of Council



Marie Gallo  
Council President

**Florence Bohdan**

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**From:** Andreanna Anderson <andreanna.green0324@gmail.com>  
**Sent:** Saturday, December 12, 2020 7:40 AM  
**To:** council@parmaheightsoh.gov  
**Subject:** W130th street recommendations

Hello it would be nice to have an Aldi instead of having to go into Middleburg heights or Brooklyn.

**Florence Bohdan**

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**From:** Dave Lansky <fairfax1920@gmail.com>  
**Sent:** Sunday, December 13, 2020 9:00 PM  
**To:** council@parmaheightsoh.gov  
**Subject:** Proposed Zoning

I believe the Property at W130th and Pearl Rd should be used for something to draw people into the city! Not Housing! You can look into Micro Brewers to build Restaurant/ Bars! You can look into something like a Dave and Busters! You can look into something like Scene 75 in Brunswick! Parma Heights needs something Big developed in the area! Something that creates Tax Revenue! Hospital type buildings! Nursing Homes and Regular Housing do not creat enough Tax Revenue for the city!

## Florence Bohdan

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**From:** Dorian Lansky <belgianbubba@yahoo.com>  
**Sent:** Sunday, December 13, 2020 9:21 PM  
**To:** council@parmaheightsoh.gov  
**Subject:** Proposed zoning

Hello,

I am reaching out regarding the upcoming meeting where zoning is being discussed. My husband and I have lived here for 20 years and over that time we have seen a steady decline in services, stores and entertainment venues. What we are left with is a hodge podge of small shops, outdated looking stores (Drug Mart), numerous gas stations, bare basic restaurants and a ridiculous amount of vape shops and vacancies.

Where there used to be a fun span of places to enjoy nights out with live music and good food within walking distance, there are now vacancies and sub par places left. Live music venues and outdoor patios are places that draw people in and keep people spending money in the community they live in. The one outdoor patio left is abysmal at best under the new ownership.

I am excited to see something new happen because this city really needs it. I feel like what ends up here never stays and what we do get is rarely exciting or different enough to draw people in. I hope you will consider using the property to put in spaces that you can make into cohesive groupings of interest such as an entertainment corridor with bars/restaurants/games/fun (what about a microbrewery or wine bar) spaces to gather and a group of quirky businesses or services that can play off each other to allow people to easily walk from one to the next little shop (example tarot card, massages, the Tree House) and an area for typical shopping and services like furniture, apparel, carpet, copying etc.

Without well planned quadrants and a mix of innovative, funky, fun place with the traditional we already have, this community will continue to stagnate and we pay too much in taxes for that to happen.

We have amazing police and fire and some decent things like the pool and library and bowling. Aside from that, this city needs to shake off the old polka mindset and really embrace change. Communities thrive when they evolve with people. It is long past time to really put in the work to better support the businesses we have and think of what is needed to stop losing everybody to other cities. We need the spend to stay here first.

Currently the city doesn't even have a working list of businesses to share to encourage shopping local with what we have which is a crying shame. That was a huge lost opportunity for holiday shopping along and I don't understand why you need a grant to have a working list. You need someone to work your social media promoting not only city actions but the businesses within the city. It would not be that hard. Get to know x business with a link to their website or Facebook. I guarantee that would go a long way for these places.

Looking forward to what the future brings and fingers crossed that some fun comes back.

Sincerely,

Dorian Lansky

Sent from Yahoo Mail on Android

**Florence Bohdan**

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**From:** e <e.pinter@aol.com>  
**Sent:** Monday, December 14, 2020 10:57 AM  
**To:** council@parmaheightsoh.gov; e  
**Subject:** Land Use/ West 130th  
**Attachments:** tiny home.png; tiny home2.jpg; tiny homes3.jpg; tiny homes4.jpg; tiny homes5.jpg

**To: Planning Commission Secretary**

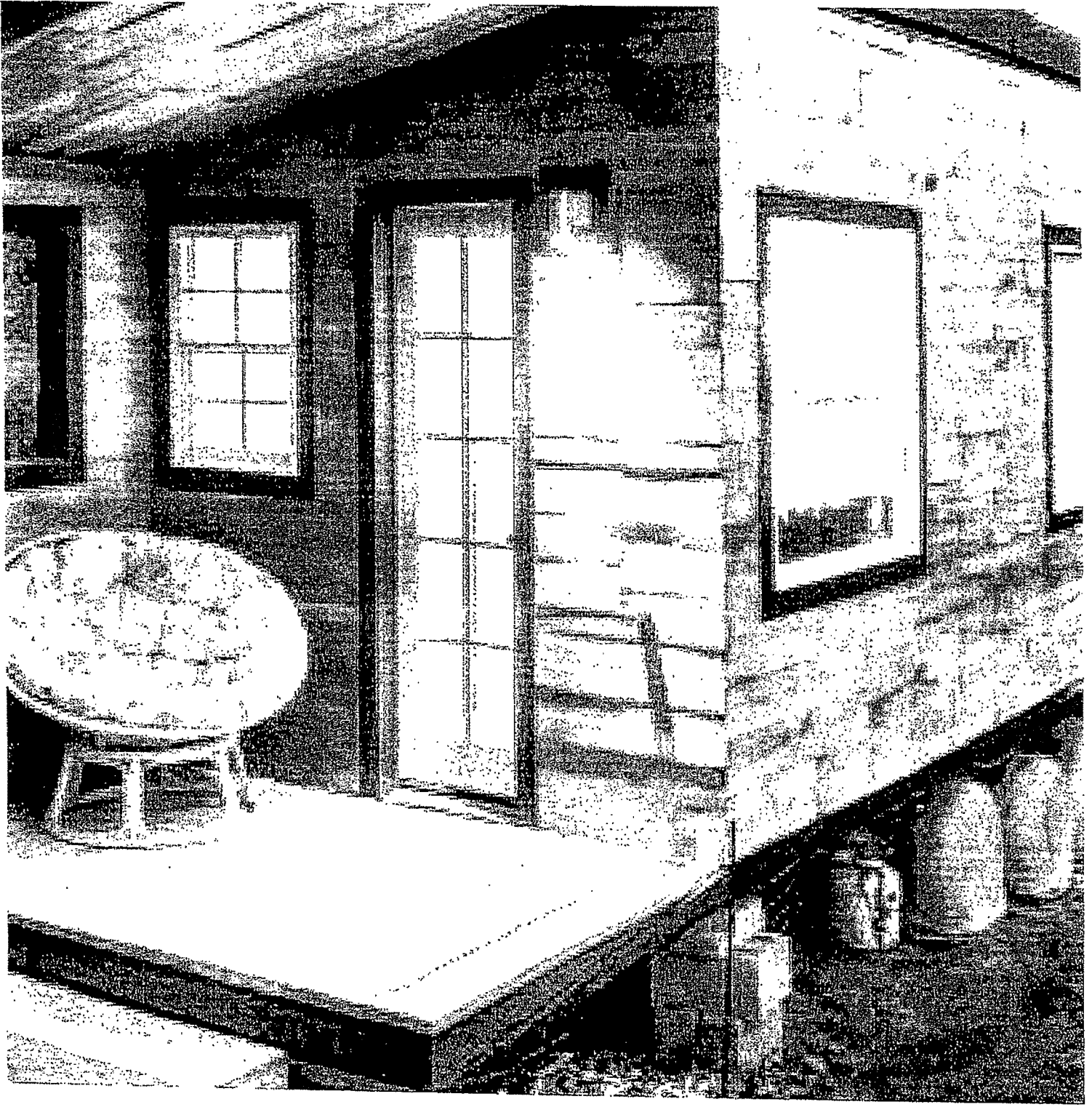
There is already a nice entrance way across from Lawnwood Ave. Parma Heights should allow a pathway for people to use tiny houses in the area from Pearl To W. 130th. Parma Heights could be the first city in N.E. Ohio to create a modestly, inexpensively efficient use of land and resources with tiny homes for those that want to downsize and to have some reserved for Veterans too.

This could create income property. Entrepreneurship opportunity. An entry point for millennials into homeownership, and a place for empty nesters to downsize gracefully into their retirement years.

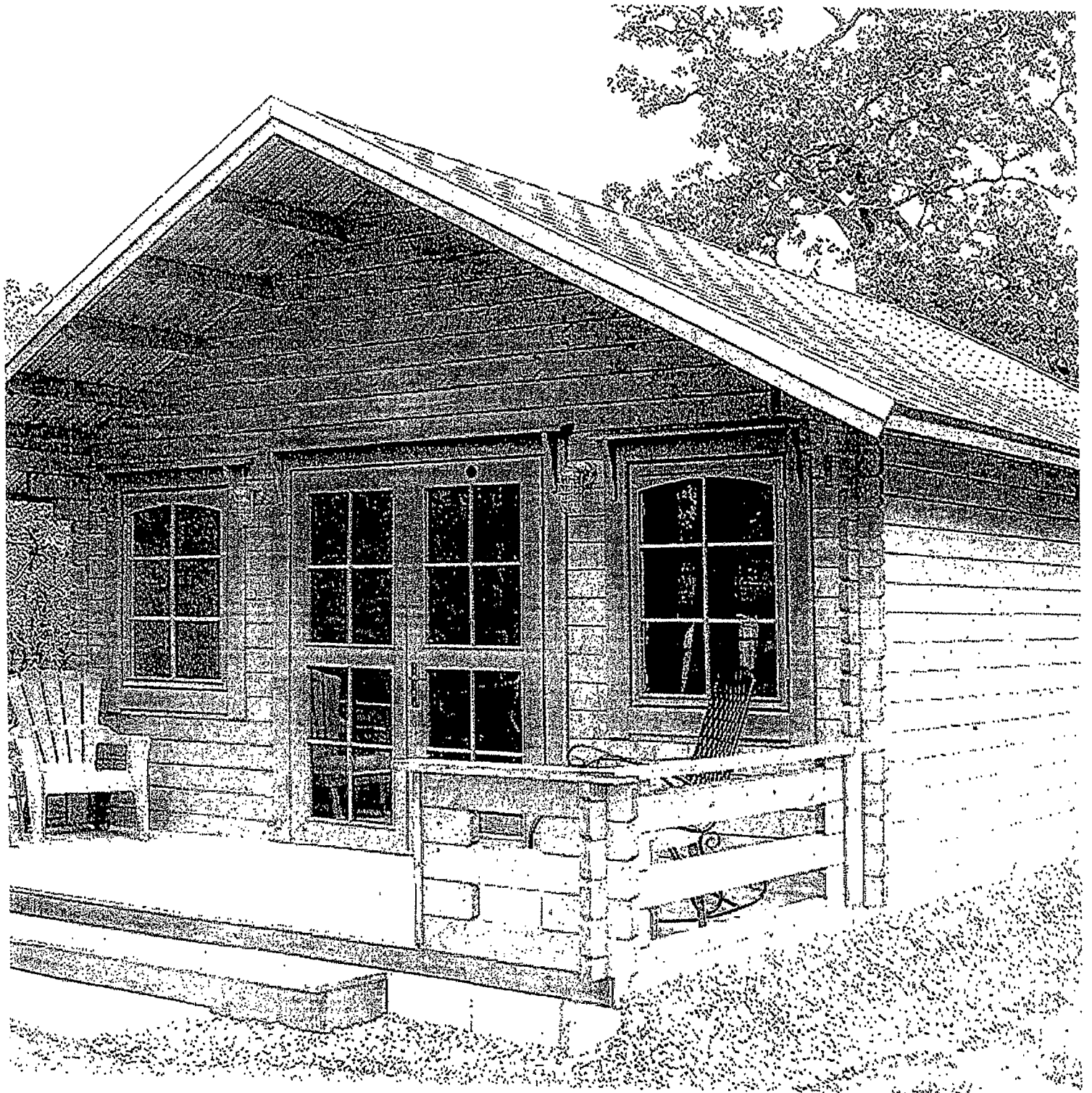
Tiny homes is a viable form of affordable housing already in parts of Denver, Seattle, and Atlanta. One of the most cited reasons people move to tiny homes is their desire to create a more sustainable lifestyle. And because they are so small, tiny houses require much less energy consumption overall: heating, cooling, and lighting. Tiny houses with solar panels have even a smaller carbon footprint.

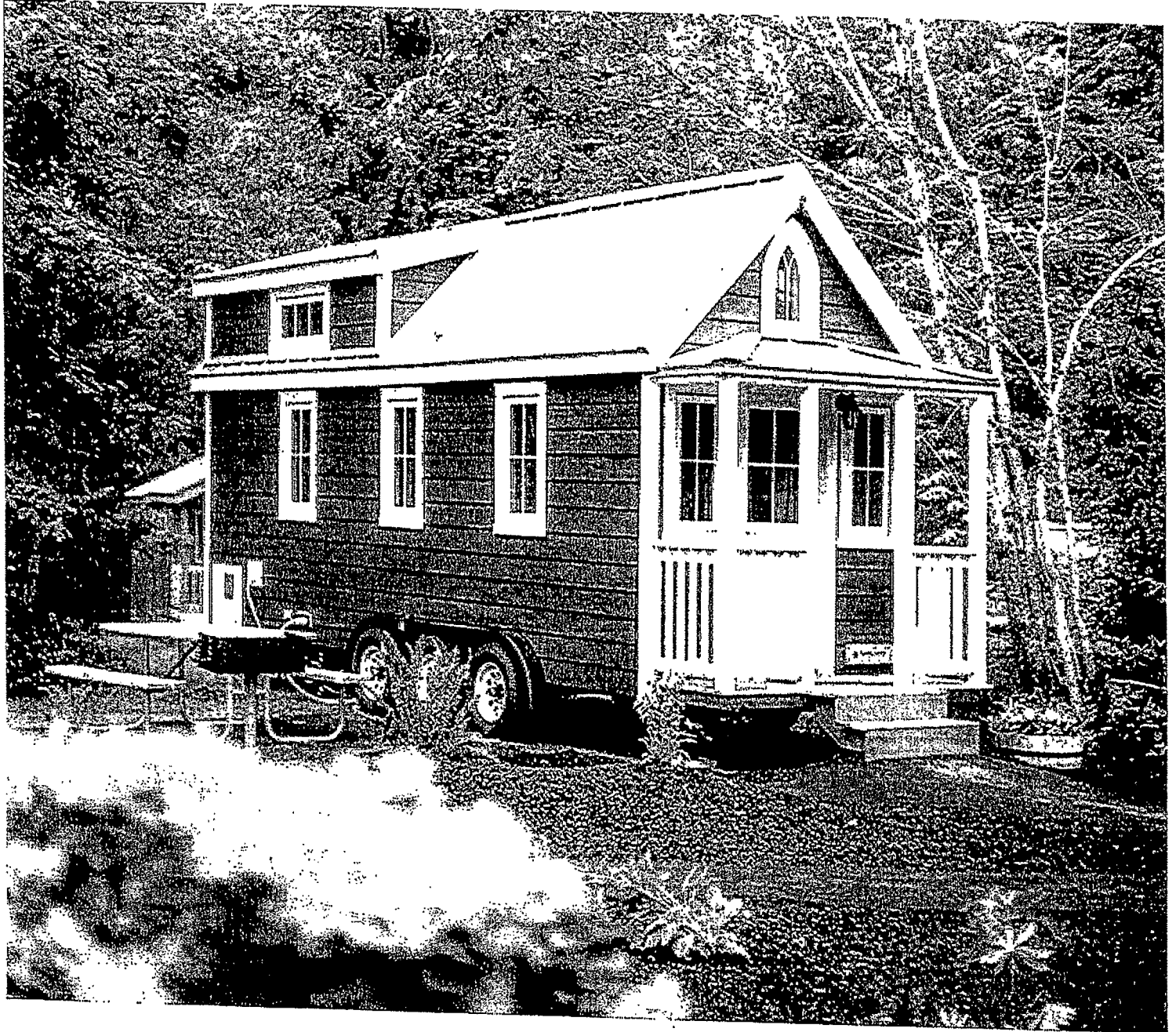
It is my hope that the Planning Commission members should explore at least what it would mean, good and bad, for the community and that tiny home residents bring in more affordable housing. In many













Vorys, Sater, Seymour and Pease LLP  
Legal Counsel

52 East Gay Street  
P.O. Box 1008  
Columbus, Ohio 43216-1008

614.464.6400 | [www.vorys.com](http://www.vorys.com)

Founded 1909

Christopher L. Ingram  
Direct Dial (614) 464-5480  
Direct Fax (614) 719-4606  
Email [cilingram@vorys.com](mailto:cilingram@vorys.com)

December 14, 2020

VIA E-MAIL

Parma Heights Planning Commission  
Attn: Florence Bohdan, Secretary  
6281 Pearl Road  
Parma Heights, OH 44130  
[Council@parmaheightsoh.gov](mailto:Council@parmaheightsoh.gov)

Re: BayMark Health Services of Ohio, Inc./MKB Holdings, LLC's  
Opposition to Proposed Land Use/Rezoning Amendments to Codified  
Ordinances

Dear Commission Members:

We write on behalf of BayMark Health Services of Ohio, Inc. ("BayMark Ohio") and MKB Holdings, LLC ("MKB", together BayMark Ohio and MKB are "BayMark") in connection with the proposed Land Use/Rezoning Amendments to the City's Codified Ordinances ("Proposed Zoning Code Amendments") pending before the Planning Commission (the "Commission"). BayMark opposes the Proposed Zoning Code Amendments for a number of reasons. Among other things, the Proposed Zoning Code Amendments violate BayMark's rights protected by the United States and Ohio Constitutions and constitute illegal and arbitrary spot zoning concerning the operation and location of a "Medication Maintenance Facility or Dispensary."

As you know, BayMark Ohio leases a portion of the property located at 6700 Pearl Road in the City of Parma Heights, Ohio (the "Property"). The Property is currently zoned within the Class C Commercial Zoning District. BayMark leased 4,800 sq. ft. of the existing building on the Property for a medical office, specifically an opioid treatment office, which is a permitted use of the Property under the current Zoning Code. The remainder of the building is vacant.

As set forth in the attached Complaint, BayMark has submitted a change of use application and site plan application to the Commission prior to the current moratorium. The Commission, however, has failed to act on the applications claiming that it was "information gathering" and

Parma Heights Planning Commission

December 14, 2020

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required additional information to understand the nature of BayMark Ohio's business. BayMark, in turn, has provided the Commission with the information required under the Zoning Code that is sufficient for the Commission to act upon and approve the applications. It is beyond dispute that the current Zoning Code expressly permits the use of the Property for an opioid treatment office as a permitted "commercial business" and that the site plan satisfies the current Zoning Code's requirements.

Instead of approving BayMark's applications, the Commission is now seeking to rezone the Property and to arbitrarily limit the location of any "Medication Maintenance Facility or Dispensary" to properties "with frontage on, and vehicular access to W. 130th Street." Limiting this type of use to one street in the City is completely arbitrary and constitutes illegal spot zoning. As you know, municipalities are creatures of statute and are prohibited from spot zoning. *See, e.g., White v. Cincinnati*, 101 Ohio App. 160, 168, 138 N.E.2d 412 (1st Dist.1956) (affirming injunction against City rezoning). It is unconstitutional for a municipality to "rezone a small area in a discriminatory or unreasonable manner." Pearlman, Weinstein, et al., *Ohio Planning and Zoning Law*, Section 8:41, at 457 (2020 ed.). *See also Bd. of Township Trs. v. Ott*, 1994 Ohio App. LEXIS 114 at \*11 (illegal to single out areas of land for different treatment than similar surrounding land). There is no basis to prohibit the operation of a "Medication Maintenance Facility or Dispensary" on the Property simply because it is located on Pearl Road. Likewise, the proposed conditions and restrictions on the use of any "Medication Maintenance Facility or Dispensary" set forth in the proposed Section 1195.05(f) are completely arbitrary, unreasonable, and discriminatory. The City is improperly singling out these types of facilities and placing onerous restrictions on them due to unfounded fears, bias and prejudice against the clients they serve. The restrictions, conditions, and vague considerations set forth in Section 1195.05(f) are not imposed on other medical offices or businesses in the City. Such restrictions are illegal and void.

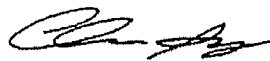
Additionally, BayMark's right to use the Property have vested and are protected by the United States and Ohio Constitutions. The Proposed Zoning Amendments cannot, as a matter of Ohio zoning law be used to prohibit BayMark Ohio from operating an opioid treatment center on the Property. *See, e.g., Gibson v. Oberlin*, 171 Ohio St. 1, 7 (1960) (rezoning cannot be applied retroactively to deprive property owner of right to use property consistent with zoning in effect at time of application. The City cannot change the Zoning Code to prohibit BayMark Ohio's use of the Property for an opioid treatment office.

Finally, the Commission has no basis to deny BayMark Ohio's use of the Property. In a telling admission, the Proposed Zoning Code Amendment recognizes that a "Medication Maintenance Facility or Dispensary" is a "commercial" use. *See* 1185.02. Yet, the Commission has arbitrarily refused to approve BayMark's applications. BayMark Ohio has the right to operate an opioid treatment center on the Property and the Commission cannot now impose conditions upon the Property to prohibit that use.

Parma Heights Planning Commission  
December 14, 2020  
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We therefore request that the Planning Commission deny the Proposed Zoning Code Amendments as applied to the Property at the Commission's meeting on December 14, 2020. I will appear at tonight's meeting and answer any questions the Commission may have.

Very truly yours,



Christopher L. Ingram

Enclosure

cc: Michael D. Pokorny, Director of Law ([law@parmaheightsoh.gov](mailto:law@parmaheightsoh.gov))  
Joseph R. Miller  
Arryn K. Miner

**From:** Ingram, Christopher L. [<mailto:clingram@vorys.com>]  
**Sent:** Monday, December 14, 2020 6:19 PM  
**To:** [Council@parmaheightsoh.gov](mailto:Council@parmaheightsoh.gov); [law@parmaheightsoh.gov](mailto:law@parmaheightsoh.gov)  
**Cc:** Miller, Joseph R. <[JRMiller@vorys.com](mailto:JRMiller@vorys.com)>; Miner, Arryn K. <[akminer@vorys.com](mailto:akminer@vorys.com)>  
**Subject:** Planning Commission Meeting

I am concerned with the representation made in tonight's Planning Commission meeting that "There is nothing in the chat box." I began inserting comments into the "chat box," however was not permitted to do so. As depicted below, the "Chat is disabled for this live stream."

Below are my comments:

Chris Ingram, 52 E. Gay St., Columbus, Ohio, counsel for BayMark Health Services of Ohio, Inc. and MKB Holdings, LLC. As set forth in my letter dated December 14, 2020, our clients oppose the proposed rezoning as applied to the property located at 6700 Pearl Road. While Ms. Hopkins was permitted to appear via telephone at this meeting, I was not provided the same opportunity. The "chat" feature of YouTube does not facilitate a meaningful opportunity to be heard. I therefore incorporate the objections raised in my letter, ask that the Commission deny the proposed amendments concerning the property located at 6700 Pearl Road, and instead approve the pending change of use and site plan applications concerning this property.

**From:** Mmarano225 [<mailto:mmarano225@aol.com>]

**Sent:** Tuesday, December 15, 2020 6:15 PM

**To:** [council@parmaheightsoh.gov](mailto:council@parmaheightsoh.gov)

**Subject:** Zoning

Hello,

I live in Parma Hts and try to buy locally. However, I'm not a fan of dollar stores and cheap uninteresting places, so I would really enjoy a Trader Joe's or Mustard Seed to shop for groceries. I would also enjoy more family fun things to do in this area, ie, movie theater, go carts or any stores that I shopped at when Parmatown was here. I would love to see more small family owned restaurants, like a nice inexpensive Italian restaurant or unique places where you can sit outside and not NEXT to a bar.

I've thought about moving many times due to the lack of places to just have good old fashioned fun! We bike ride a lot so the parks are great but it would be nice to "stop" somewhere to eat and have a conversation with locals.

Too many cheap places, bars, smoke shops, gas stations, discount stores and things that just don't make sense!

Thank you for listening!

Melissa Marano  
York road home owner

# VORYS

Vorys, Sater, Seymour and Pease LLP  
Legal Counsel

52 East Gay Street  
P.O. Box 1008  
Columbus, Ohio 43216-1008

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Christopher L. Ingram  
Direct Dial (614) 464-5480  
Direct Fax (614) 719-4606  
Email [clingram@vorys.com](mailto:clingram@vorys.com)

January 20, 2021

## VIA E-MAIL

Parma Heights City Council  
Attn: Florence Bohdan, Secretary  
6281 Pearl Road  
Parma Heights, OH 44130  
[Council@parmaheightsoh.gov](mailto:Council@parmaheightsoh.gov)

Re: BayMark Health Services of Ohio, Inc./MKB Holdings, LLC's  
Opposition to Proposed Land Use/Rezoning Amendments  
to Codified Ordinances

Dear Council Members:

We write on behalf of BayMark Health Services of Ohio, Inc. ("BayMark Ohio") and MKB Holdings, LLC ("MKB", together BayMark Ohio and MKB are "BayMark") in connection with the proposed Land Use/Rezoning Amendments to the City's Codified Ordinances ("Proposed Zoning Code Amendments") pending before City Council (the "Council"). BayMark opposes the Proposed Zoning Code Amendments for a number of reasons. Among other things, the Proposed Zoning Code Amendments violate BayMark's rights protected by the United States and Ohio Constitutions and constitute illegal and arbitrary spot zoning concerning the operation and location of a "Medication Maintenance Facility or Dispensary."

As you know, BayMark Ohio leases a portion of the property located at 6700 Pearl Road in the City of Parma Heights, Ohio (the "Property"). The Property is currently zoned within the Class C Commercial Zoning District. BayMark leased 4,800 sq. ft. of the existing building on the Property for a medical office, specifically an opioid treatment office, which is a permitted use of the Property under the current Zoning Code. The remainder of the building is vacant.

As set forth in BayMark's Complaint, BayMark submitted a change of use application and site plan application to the Planning Commission (the "Commission") prior to the current moratorium and rezoning process. The Commission, however, failed to act on the applications



# VORYS

Legal Counsel

Parma Heights City Council

January 20, 2021

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claiming that it was “information gathering” and required additional information to understand the nature of BayMark Ohio’s business. BayMark, in turn, provided the Commission with the information required under the Zoning Code that is sufficient for the Commission to act upon and approve the applications. BayMark’s repeated requests to have its applications heard were met with irrelevant requests for additional information or, worse, silence. It is beyond dispute that the current Zoning Code expressly permits the use of the Property for an opioid treatment office as a permitted “commercial business” and that the site plan satisfies the current Zoning Code’s requirements. Likewise, pursuant to the current Zoning Code, the Commission’s failure to act upon an application within a specified timeframe is not deemed a denial of the same.

Instead of approving BayMark’s applications, the City is now seeking to rezone the Property and to arbitrarily limit the location of any “Medication Maintenance Facility or Dispensary” to properties “with frontage on, and vehicular access to W. 130th Street.” Limiting this type of use to one street in the City is completely arbitrary and constitutes illegal spot zoning. As you know, municipalities are creatures of statute and are prohibited from spot zoning. *See, e.g., White v. Cincinnati*, 101 Ohio App. 160, 168, 138 N.E.2d 412 (1st Dist.1956) (affirming injunction against City rezoning). It is unconstitutional for a municipality to “rezon[e] a small area in a discriminatory or unreasonable manner.” Pearlman, Weinstein, et al., *Ohio Planning and Zoning Law*, Section 8:41, at 457 (2020 ed.). *See also Bd. of Township Trs. v. Ott*, 1994 Ohio App. LEXIS 114 at \*11 (illegal to single out areas of land for different treatment than similar surrounding land). There is no basis to prohibit the operation of a “Medication Maintenance Facility or Dispensary” on the Property simply because it is located on Pearl Road. Likewise, the proposed conditions and restrictions on the use of any “Medication Maintenance Facility or Dispensary” set forth in the proposed Section 1195.05(f) are completely arbitrary, unreasonable, and discriminatory. The City is improperly singling out these types of facilities and placing onerous restrictions on them due to unfounded fears, bias and prejudice against the clients they serve. The restrictions, conditions, and vague considerations set forth in Section 1195.05(f) are not imposed on other medical offices or businesses in the City. Such restrictions are illegal and void.

Additionally, BayMark’s right to use the Property have vested and is protected by the United States and Ohio Constitutions. The Proposed Zoning Amendments cannot, as a matter of Ohio zoning law be used to prohibit BayMark from operating an opioid treatment center on the Property. *See, e.g., Gibson v. Oberlin*, 171 Ohio St. 1, 7 (1960) (rezoning cannot be applied retroactively to deprive property owner of right to use property consistent with zoning in effect at time of application. The City cannot change the Zoning Code to prohibit BayMark’s use of the Property for an opioid treatment office. Likewise, the City cannot change the Zoning Code to retroactively deem BayMark’s Applications denied or require BayMark to follow the proposed development plan process. Section 1133.07 of the Proposed Zoning deems an application denied if the Commission does not act upon it within 60 days from the date the application was deemed complete, but no such provision exists under the current Zoning Code. The same is true of the

# VORYS

Legal Counsel

Parma Heights City Council

January 20, 2021

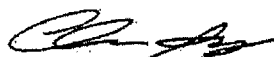
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extensive development plan submission requirements under Sections 1133.08-1133.14, which do not exist under the current Zoning Code.

Finally, the City has no basis to deny BayMark Ohio's use of the Property. In a telling admission, the Proposed Zoning Code Amendment recognizes that a "Medication Maintenance Facility or Dispensary" is a "commercial" use. *See* 1185.02. Yet, for years the Commission has arbitrarily refused to approve BayMark's applications. BayMark Ohio has the right to operate an opioid treatment center on the Property and Council cannot now impose conditions upon the Property to prohibit that use.

We therefore request that the City deny the Proposed Zoning Code Amendments as applied to the Property.

Very truly yours,



Christopher L. Ingram

cc: Michael D. Pokorny, Director of Law ([law@parmaheightsoh.gov](mailto:law@parmaheightsoh.gov))  
Paul J. Schmuacher ([pshumacher@dmclaw.com](mailto:pshumacher@dmclaw.com))  
Joseph R. Miller  
Arryn K. Miner

CLI/akm