

Athens City Planning Commission  
Minutes of Regular Meeting  
Thursday, October 18, 2018, 12:00 p.m.

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The regular meeting of the Athens City Planning Commission was held in City Council Chambers, third floor, at City Hall on October 18, 2018.

**Attendees:** David Fisher, Dave Anderson, Kim Miller, Rick Margolis, Dan Deluca, Sam Schweizert, Elijah Wahib, Daniel, Duff, Vince Jarrett, Jennifer Johnson, Jon Cozad, Jerry Kasai, Bill Becker, Steve Wood, Brody Bauers, Greg Robertson, Jeremy Young, Nicolas Binfield, Jacob Collins, Lisa Eliason

**1. Call to Order**

RJ Sumney called the regular meeting of the Planning Commission to order at 12:03 p.m. and administered the oath to all who intended to speak before the commission. Quorum was established.

**PLANNING COMMISSION MEMBERS:**

RJ Sumney, Chair ..... Present  
Christy Zempter ..... Present  
Nancy Bain, Vice Chair..... Absent  
Steve Patterson, Mayor ..... Present  
Andy Stone, Service-Safety Director..... Absent

**STAFF:**

Paul Logue, City Planner ..... Present  
Rick Sirois, Code Enforcement Director..... Present

**2. Disposition of Minutes**

*Steve Patterson moved to accept the September 20, 2018 minutes. RJ Sumney seconded. All present voted aye. Motion passed 3:0.*

**3. Cases**

**None**

**4. Communications**

**Ohio University Chilled Water Plant, North McKinley Avenue**

Rick Sirois/Summary

This is a communication for a Title 41/Site Plan Review. Ohio University is currently under design for a new Chilled Water Plant to be located on North McKinley Avenue on Ohio University's Athens Campus. The objective of this project is to construct a chilled water plant that will be tied into the campus district cooling system and will provide

central cooling to a number of Ohio University buildings. The property on which the chilled water plant will be constructed is zoned R3.

They are invoking government property exemption for this project under ACC 23.03.19 - Government property exemptions, which reads as follows: “The administrative authority of all governmental units (including city, township, county, state, and federal units) must make a reasonable attempt to insure that their buildings and grounds conform to the regulations of the zoning code. When such authorities find they cannot conform to these regulations, they shall inform the planning commission in writing, outlining the nature of and reasons for such nonconformance”.

Applicant: Ohio University

Parcel: A027070000400

Zoning: R3

Current Land Use: OU parking lot

Proposed Land Use: Chilled Water Plant

Proposed # Buildings: 1

Building Size: 17,142 sq. ft.

Steve Wood/Chief Facilities Officer & Senior Associate VP, Facilities Management and Safety, Ohio University

Did not come with a presentation for the Planning Commission today, but are here to answer any questions about the construction and location of the Chilled Water Plant.

RJ Sumney requested Mr. Wood give background about the site location and selection process.

Steve Wood: The sight was identified primarily because when they looked at their district system they noticed capacity issues on the east side of campus. They identified some areas on the east side of campus where they could improve or add additional capacity to the plant. When they looked at their land holdings that was a good location as far as relationship to the rest of campus as well as future growth in that area.

Jeremy Young/Lawyer, Roetzel & Andress, Columbus

They are representing CPP Athens I LLC and its affiliates. CPP owns property immediately adjacent to, and south of, the proposed location of the Chilled Water Plant. Introduced attorney David Fisher, Rick Margolis with CPP, and Dave Anderson, President. CPP owns numerous apartment buildings in close proximity to the proposed location that house over 1,200 OU students. There is a recently constructed pool in close proximity to the proposed plant that is in use by the residents. In addition to CPP, there are other residential student housing complexes in close proximity to the proposed plant with about 300 students residing. Altogether there are about 1,500 students living in close proximity to the proposed chiller location. Many of whom live just 100’ away in River Park Towers. Ohio University is attempting to turn what is currently an open space in a residential area into an industrial park. The current proposal is a Phase I building

designed to create 2,500 tons of capacity for chilled water and the plan is to expand the site to increase capacity to 7,500-10,000 tons of capacity including boiler facilities.

Mr. Young requested clarification from the Planning Commission on their understanding that the purpose of today's hearing is for the Planning Commission to learn about the chiller proposal and then will do one of three things: approve, approve with conditions, or disapprove the application.

RJ Sumney: Today's session is just a communication session. We will take the information from today and then at a later meeting we would have the proposal come before the commission, and at that point we will vote and make a recommendation.

Steve Patterson: Typically it is a recommendation to City Council but today it is just a hearing.

Mr. Young inquired if the commission received the letter that was sent yesterday by CPP about their opposition and if this will be part of the official record. RJ Sumney noted that it was received and will be part of the record. Mr. Young gave the CPP court reporter a copy of the letter.

Mr. Young proceeded to review key points of the letter:

- CPP wants the Planning Commission to discharge its duty to apply the zoning code to the benefit of the community. CPP wants the Planning Commission to understand that it has an important function to play with respect to this application. Under ACC 23.01.02, it was enacted for the purpose of promoting the public health, safety, morals and general welfare of citizens of Athens and to protect property rights of all individuals by ensuring compatibility of uses and practices within zones. CPP understands that the law in Ohio gives the sovereign a lot of leeway when it comes to compliance with municipal zoning codes. That leeway is not unlimited (referenced a landmark 1980 case, *Brownfield vs. State*) and also ACC 23.03.19 that Rick Sirois read from earlier. The threshold showing before a letter is to be sent to the Planning Commission by the university is that it must make a reasonable attempt to ensure that buildings and grounds conform to the regulations of the zoning code. The Planning Commission has to decide if OU has done enough to comply with the zoning code in the design and location of this chiller. CPP does not feel that OU has done anything to comply. CPP is not proposing that OU doesn't have the right to build this facility. CPP wants them to satisfy the requirements under Ohio law, which means they can't build in the location proposed until it shows that it attempted compliance with the zoning code.
- When CPP first found out that OU was proposing to construct a new chiller plant in the proposed location, they had concerns: proximity to CPP property, excessive height, noise pollution it would produce, architectural design which is not consistent with the surrounding structures, and that it is inconsistent with the 2016 Master Plan for the university which identifies N. McKinley Avenue as one of two major vehicular gateways to campus which is to be enhanced. CPP is of the opinion that this would have the exact opposite effect.
- CPP met with OU on several occasions about these concerns, and requested documentation regarding alternative designs and locations that were considered. OU

- provided some information, but a public records request was submitted 10/5/18 requesting documents related to site selection, alternative locations, any analyses that were done concerning zoning, and alternative designs. OU complied with the request on 10/16/18 and these documents raise more questions. CPP is asking the Planning Commission to request more information from Ohio University so it can evaluate whether OU satisfied its legal burden to attempt to comply with zoning code.
- The only document that was provided that related to siting was the 2017 Utility Master Plan. That plan identified 7 possible locations for the chiller. Parking lot 50 was chosen but was not even listed as a potential location, it didn't go through the site selection process. Closest site geographically to lot 50 is at the intersection of N. McKinley and Mill Street (the Utility Master Plan identified this location as the rugby fields). The 7 locations that were in the plan were scored based on 19 categories. None of the 19 factors had anything to do with zoning compliance or proximity to residential structures. The sites were ranked according to preference. The highest ranked site was at the tennis bubble facility near the golf course. Senior management decided it was not a viable option. The rugby site location was selected even though it was tied for 3<sup>rd</sup> in the scoring process. CPP proposes this site as an alternative site; it is zoned M for industrial purposes so the plant would be more compatible there. The other alternative proposed by CPP in the letter is within the athletic fields closer to US33. Even according to OU's master plan for utilities, both the alternatives proposed by CPP in its letter are more appropriate for the chiller facility than lot 50.
  - In a 9/14/18 email from Greg Robertson at OU summarizing a 9/6/18 meeting with CPP, it suggested that OU learned from this meeting that OU has a legal obligation to attempt to comply with zoning code. Until then they didn't know they had that obligation to attempt to comply.
  - Sound Study: A study was commissioned by OU. Centec was hired to conduct a preliminary sound study. CPP commissioned Henderson Engineers to review and evaluate the Centec report. Centec's report found that the chiller would generate constant sound to the magnitude of a passing freight train for CPP's residents. Henderson reported that Centec understated the level of noise that would be produced by the cooling towers, overstated the effectiveness of the proposed mitigation steps, and sets sound criteria that is inappropriately high. The sound will double the current level. The Henderson report found that the chiller will violate the city's noise ordinance.

Mr. Young urged the Planning Commission to order another sound study from the university. The Planning Commission is empowered and duty bound to carefully evaluate OU's application. Not proposing that OU should not build this facility but that it should be built somewhere else.

#### Rick Margolis/Columbus Pacific Properties

Have about 1,200 student beds here at the university. Developers don't have unlimited rights; they have to show that it is reasonable. A few years ago River Park asked for a half story variance but the Board of Zoning Appeals denied the variance. CPP changed their design and removed the ½ story. The proposed plant is much taller. OU says they had no idea they had to attempt to comply with zoning regulations. They just wanted to

do what was good for them, not anyone else. Put it (the chiller) next to the highway or put it in the area where it is zoned for commercial. When CPP builds they design to the neighborhood so it is in keeping aesthetically. The Planning Commission has the authority to deny the construction of this building and make it the least impactful.

Dan Deluca/owner 10 Milliron Street

10 Milliron is closer to the proposed chiller than CPP's property. He found out about this proposed chiller less than 24 hours ago. OU has shown their students the right to peace and quiet in their dorms. The proposal is extremely noisy from what we've seen so far. 1,500 kids are in direct access to this area. This is 16% of the OU student body that will be affected by this. The noise will affect study habits, problems with irritability, will increase calls for noise complaints. This area is a high density area for housing. The surrounding property owners were not informed about this proposal before 24 hours ago. He just heard about the sound studies, the 24/7 sound will affect the 1,500 students. There are other locations that should be looked at. This is trying to be flown under the radar. This is a main gateway to OU and it doesn't represent the university or city well. Do the right thing and consider an alternate location, variances should apply for this.

Steve Patterson: Clarified that the city does not have a high density area per se; does not have an R4 high density zoned area.

Steve Wood/Chief Facilities Officer & Senior Associate VP, Facilities Management and Safety, Ohio University

- Regarding expanding the sight: the capacity of the sight is as it is described, it will not be expanded. The expansion is to be within the existing footprint, within its walls.
- Regarding proactively following the zoning regulations, they were not aware that they needed to write a letter, but they were designing with the community in mind, including the sound study, and mitigation efforts to lower the height.
- Regarding the gateway: The picture shows the major gateway still exists, this hasn't changed.
- Regarding sighting options: On 9/19 they provided the cost for the option near the highway (5.4 mil). They held public forums, made surveys available, and advertised in newspapers
- Regarding the aspects of the different locations: The Utility Master Plan started the process and it ultimately led to the final location.

John Cozad/Director, Infrastructure Projects, Ohio University

- Regarding the noise and the comment about the level being similar to a passing freight train. The level of noise is 74 decibels if you are sitting on top of the plant. 70 decibels is what a freight train sounds like at 100' away. The level of noise would be 46-48 decibel at 195' which is the closest point of River Park to the plant. They measured the ambient levels in the local area, which were 41-43 decibels.

Dan Deluca asked if they did a study from Milliron. Mr. Cozad indicated that they did model it but he didn't have those numbers available.

Steve Patterson asked for an idea of what 46 decibels would be. Mr. Cozad replied that 50 decibels is the level inside an average residential household. A vacuum running at 10' away is 70 decibels. We are slightly below that.

Vince Jarrett/RMF Engineering

Most of the noise is off the front of the building and minimal off the sides. He will get the Milliron numbers for Mr. Deluca.

**5. Report from City Planner and Director of Code Enforcement**

Paul Logue

- Regional Planning Commission Ad Hoc Committee: Serving to help find the right path for the Plains area of unincorporated Athens Township and unincorporated Dover Township to assist them with their goals of establishing a zoning ordinance there. The 1<sup>st</sup> meeting was held a couple weeks ago and the next will be October 26<sup>th</sup> at the high school. They have asked the trustees of both townships to provide a map of what they believe to be their area of The Plains to use that as the starting point.
- Comprehensive Plan: Met with the Disabilities Commission to learn their needs. Working with OU students - recent workshops at Clippinger Hall and in front of the County Courthouse to discuss safety and housing issues, and a forum last week to better understand diversity and inclusion issues. Will have a report in about a month.

Steve Patterson asked for an update on the meeting with Bricker and Eckler about tools that can be used in the city for housing development.

- Have been trying learn more about strategies to do tax increment financing to assist with how to get roads and infrastructure built for real estate that is inside the city limits. There are tools available (TIF model). We used this on E. State St. when we widened it from 3 to 5 lanes. Looking to apply a TIF in the residential areas.

Rick Sirois

- Meeting this week with a Cross Cultural Communications class at Ohio University regarding signage concerns. Service-Safety Director and Chief Pyle will be there as well.
- Attended a Far East Neighborhood Association meeting last week to discuss their concerns.

**6. Opportunity for Citizens to Speak**

None

**7. Announcements & Other Business**

- The next meeting will be November 1, 2018.
- Announcement: Temporary street closing on Court Street this weekend for OU Homecoming - parade starting at 10 a.m. Halloween block party the weekend

following will have street closures as well. The Honey for the Heart parade will be on the 27<sup>th</sup> at 6pm.

8. **Adjournment**

The meeting was adjourned at 1:02 p.m.

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RJ Sumney, Planning Commission

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Patricia Witmer, City of Athens