

Date: Wednesday, October 24, 2018

Subject: Response to Attachment “Greenspace overlay FAQs without map”

Civic Friends,

The Attachment [“Greenspace overlay FAQs without map” – to be referenced as “FAQs” henceforth] sent to you on October 12, 2018 in an email from “james oberla jroberla@sbcglobal.net” presents one side of the argument about Issue 31. This response presents another.

Responses to the FAQs are organized in a similar manner as they were in the Attachment, but unlike the FAQs, back up documentation and references have been provided so you can do your own fact checking. The original FAQs is included as well for those who wish to reference it. Hopefully this organizational style will be helpful as you consider your decision on November 6, 2018.

As one who was involved in creating the original 1989 Green Space Ordinance, the driving force which shaped the green space we now enjoy was the development of Stonegate Village. Originally, it was not only going to occupy the top of the hill, but to come down the hill to Goodale. Working with the developer and the then existing property owners, we were able to reach an agreement, moving Stonegate to its present position on the upper reaches of the hillside and keeping the remaining hillsides free of development.

Our next concern a few years later was at the western edge of the Green Space area when confronted by a developer who told us it was a done deal - we would see seventy-five condominiums in a Cotswold Village style developed on the nearly ten acre Voelker - Tarpay estates. This threatened to undo what had been accomplished in establishing the 1989 Green Space Overlay. Our work with property owners and elected officials of both Grandview Heights and Marble Cliff enabled us to say thanks, but no thanks to the developer.

The result was the ability to preserve the unique and historic Voelker and Tarpay residences, define limits on development on the historic West End of Goodale Boulevard, and provide our communities with a park space for all and used by scouts to complete their Eagle Scout Projects.

The ability to work with then-existing property owners in sharing the beauty of this area with the entire community and visitors is truly rewarding. Grandview Heights and Marble Cliff were fortunate enough to have owners at the time recognize and preserve the rare combination of topography and openness in and near the "Green Space" to create what has been a country like setting for all to enjoy in a major metropolitan area. We don't have gated areas. We have open areas of immense beauty and serenity where all are welcome to come, walk, and enjoy. This is what Issue 31 is really about - adding protections to what previous property owners have given our communities, acknowledging them for the foresight they had and the gifts they bestowed.

Much as Secretary of State Jon Husted has done in rendering his decision, the intent of this response is to be fact based and within the established legal framework that guides development in our community. To help understand and put in context the importance of the decision the community is being asked to make, links appear below and throughout this document for you to use as resources. If after reading, you have additional questions, please contact me to continue the dialogue. The intent of my effort is to enable you to make an informed decision after considering the pro and con arguments.

- <https://joingrandview.com/>
- <https://protectgrandview.com>
- <https://www.grandviewheights.org/Blog.aspx>

Robert B. Claussen
Lifelong Grandview Resident / Concerned Citizen
Grandview High School Graduate / Second Generation
Our Three Sons were the Third Generation

PREAMBLE

I am going to do something entirely different and reproduce information from the end of this response here at the beginning. By doing so, I hope to help you understand;

- this issue of vital importance to our community;
- that I see this as a fact based dialogue;

- that there needs to be follow up beyond the election in deciding the fate of what has shaped the character of the entire community for nearly three decades;
- this is worth the time to read and understand in our fast paced world where “sound bites” are the norm

CONCLUSION

It has been a lot of work, looking at information on proponents and opponents websites of Issue 31 for more than a week; putting these thoughts down in a respectful and organized way for others to understand the implications for not only the green space which we have all enjoyed for nearly three decades, but to help voters understand the issues and the significance of their vote.

I will admit, I am biased and feel blessed to have been a part of what has been an enjoyment for so many of our community. I have tried to be as factual as possible, raise questions for my readers to ponder and dialogue with others. For those who may have questions or comments, my contact information is provided.

FOLLOW UP

Following actions taken to ensure major stakeholders are included in the conversation:

- The five property owners [with the inclusion of the sixth should Issue 31 pass] in support of Issue 31 within the Green Space Overlay were sent a copy of this response prior to its general release.
- The two property owners in opposition received a copy of this response on Wednesday, October 24, 2018.
- Copies of this response were sent to
 - <https://joingrandview.com/>

- <https://protectgrandview.com/coalition>
- <https://www.grandviewheights.org/Blog.aspx?IID=223#item>
- A request was sent to no.on.issue31@gmail.com [Citizens to Protect Goodale Greenspace] on Wednesday, October 24, 2018 asking the verified misinformation identified as “**Incorrect**” in this response be corrected on <https://protectgrandview.com/>
- A request was sent to <https://www.grandviewheights.org/> on Wednesday, October 24, 2018 requesting a link on their “Blog” to this response be provided to allow a balanced presentation by the City of the facts for Issue 31.
- Conversations were started with media outlets on Wednesday, October 24, 2018 to ensure voters receive the fact based information identified in this response.

What appears below this section is a point by point address to significant claims made in the FAQs you received in an email on October 12, 2018 addressed to “Civic Friends”. In writing it, my wife said don’t waste your time – it is too long, involved, and people won’t read it. Refer back to my opening comment [reproduced below] with the key point emphasized in **bold**:

- Responses to the FAQs are organized in a similar manner as they were in the Attachment, but **unlike the FAQs, back up documentation and references have been provided so you can do your own fact checking.** The original FAQs is included as well for those who wish to reference it. Hopefully this organizational style will be helpful as you consider your decision on November 6, 2018.

That is why this response is long and involved. And why it is was necessary for me, as a private citizen who has called Grandview my home for my entire life to compile this response. I cannot emphasize the importance of your vote to our community. Please take the time to read, ponder the evidence presented and consider when deciding your vote. If there are questions or comments you wish to address, my contact information is provided. If you find the information valuable and informative, please feel free to share this email with friends by forwarding it to preserve the links provided. I welcome an open dialogue and stand behind what is presented.

Thank you,

Robert B. Claussen (Bob)

robert.claussen@yahoo.com Email
614 432-0314 Cell Phone (Bob)

WHAT IS ISSUE 31?

FAQs Statement: “Issue 31 is an effort by a **petitioner [emphasis added]** to block property owners from exercising their legal rights to use their property in the way that the City’s building code allows. More specifically, it is an effort to limit one family’s desire to build their home on land they have owned for almost a decade.”

Response: Incorrect. This statement has many issues, but we will deal with the one identified in **bold**. It may seem like a small and insignificant point, but it is important to address because the writer of the FAQs is painting a picture of a disgruntled individual. By **law**, a committee of petitioners supporting an initiative petition **must consist of 3 individuals**. Here is background in the co-petitioners:

- The co-petitioners along with Ms. Oster are William Thompson and Raymond Tesner. Thompson does not reside in the Green Space. Tesner and Oster do. Thompson and Oster are longtime residents of Grandview Heights (12+/- years each) with Tesner moving to the area in the last couple of years.

FAQs Statement: “Issue 31 is an effort...” “... to block property owners from exercising their legal rights to use their property in the way that the City’s building code allows. More specifically, it is an effort to limit one family’s desire to build their home on land they have owned for almost a decade.”

Response: Incorrect. This is really the crux of the issue. Issue 31 WILL “... limit one family’s desire to build their home on land they have owned for almost a decade” if it passes. BUT, it will not be limited to just that family. It will apply equally to **all** property owners in the in the Green Space Overlay, just as the 100’ setback currently applies to the same group [including the “one” family]. It is a zoning ordinance, something with which we are all familiar. And with passage, the code [setback] will change from 100’ to 200’.

It has been argued because someone has owned property for any length of time they should be able to do whatever they want with that property – it’s my right, and the City cannot “take” that right away. That is not what we are talking about here, but it is an emotional argument that is being used. What we are arguing about is the ability for the owner to use their property in a way the City building code allows. Before we deal with that, we need to clarify what the 100’ setback means.

The setback starts from the centerline of the street, not the edge of the street. From the CENTER line of the street to the front of my home at 1086 Lincoln Rd is approximately 93'. From the centerline of Goodale to the western edge of the retaining wall at 1050 Lincoln Rd is approximately 108'. From the centerline of Goodale to north edge of the retention pond [marked by the concrete slab covering the outlet, partially hidden by the large dark rock] is approximately 103'. Walk Goodale with those images of what 100' looks like and imagine the Hillside in the Green Space Overlay with homes dug into the hillside.

What happens to the character of the hillside along Goodale? They essentially become like any other suburban street, the character of the Green Space Overlay becomes meaningless, and the community will have lost an asset that sets us apart from many other communities. Taken in context, 200' is important for maintaining a unique and valuable asset to our community, one which is open to all and which we all enjoy. Two hundred foot is supported by five of the seven property owners in the Current Green Space Overlay.

If it does not pass, that same family **may** still not be able to build their home on land they have owned for almost a decade. Their proposal must be consistent with many other conditions existing in other ordinances that define the character and standards that again apply equally to **all**. That is why we have rules and regulations, to set expectations and expect them to be enforced.

That “**may**” is really the issue. Issue 31 is a direct response to the City’s failures to follow its own codified ordinances, rules, and policies. The Mayor and a handful of residents have opposed Issue 31 suggesting that no change to the original 1989 Green Space Ordinance is needed because the goals and policies behind the original Ordinance have been and will continue to be maintained and are not in jeopardy of being eroded. These statements are far from accurate. One only has to look at the actions of the City to realize they are far from a disinterested party, pushing their own agenda.

The City is included in its own tab on <https://protectgrandview.com>. Under that tab is a letter from Mayor Ray E. DeGraw, dated August 13, 2018. Many of the same claims presented in the FAQs are cited in that letter. You may want to read the letter, making a mental note of the claims. You will find those claims addressed as we discuss them in our journey through the FAQs. In addition to the Mayor’s letter, a link is provided at the end to the Grandview Heights website Blog from Protect Grandview. In that blog is some of the same misinformation found in the FAQs you received on October 12th and on the Protect Grandview website.

What concerns me as a citizen of this community is our government has taken a position in support of one side of a two sided argument. Typically individuals may think if the City is supporting it, it must be ok. That in my mind is a problem. As we go through and address the FAQs statements, pair the FAQs with the City statements. If there is a problem with the FAQs statement and the City parallels that statement, there is also a problem with the City’s statement. The links to the letter and the City’s Blog are provided below:

- <https://protectgrandview.com/city>

- <https://www.grandviewheights.org/Blog.aspx?IID=223#item>

Issue 31 arose in response to the City's actions and the trend toward abandoning City Code and Design Guidelines in favor of the increasing pressures of some property owners and developers. That abandonment is on open display with regard to 1000 – 980 Elmwood, which attempts to set a precedent that is at odds with the intent of the 1989 Ordinance:

- WHEREAS, it is imperative that such development and re-development proceed in a planned way so as to maximize property values and the unique character of this “Greenspace” area.”

Picture if you will homes cut into the hillside along Goodale just above the current 100' setback. That is the precedent that will guide development in the Greenspace and forever change its character. Is this the way we really want to allow development to occur on what is a very valuable asset to our community – setting a precedent on a small portion of the Greenspace, then allow others to exploit that precedent? How does that comport with the “WHEREAS” clause cited above?

Issue 31 reinforces and strengthens the Green Space by increasing the front yard setbacks of single-family home sites along Goodale Boulevard so that these sites remain single-family home sites. It protects the Green Space from overdevelopment and from a City's willingness to sacrifice the character of the Community under the threat of litigation.

FAQs Statement: “Issue 31 disingenuously suggests it is “saving the greenspace”, but if you actually read the proposed ordinance, you will see that this is a red herring. First, **the parcel that this homeowner wishes to build on has never [their underline, not mine] been within the existing greenspace.**”

Response: Incorrect. It was, and is under the amended law, included in the Green Space as part of the “lot” defined as 1000 Elmwood [Ordinance No. 89-20, “Section 1. That all **lots [emphasis added]** fronting on the north side of Goodale Boulevard ... shall be included in this new overlay district.”] The “lot” extended from the top of ridgeline on Elmwood to Goodale. In 1990, the city purchased the first 100' feet of 1000 Elmwood and dedicated it as parkland, but did not remove the “lot” from the overlay district.

- <https://joingrandview.com/2018/10/13/the-original-1989-green-space-ordinance/> The Original 1989 Green Space Ordinance

FAQs Statement: “Second, the petitioner's proposed ordinance actually **repeals** the existing

greenspace.”

Response: Incorrect. To repeal means the language must include the word repeal. Reference the 1989 Ordinance, the final statement [“Section 6. That Ordinance Number 89-19 is hereby repealed”] repeals the previous ordinance.

The title of Issue 31 – “An Ordinance to **amend [added emphasis]** Section 1151.04 of the Codified Ordinances of the City of Grandview Heights, Ohio, to redefine the Green Space Overlay District and the development standards for property located within the Green Space Overlay District.” Please read the full text of Issue 31 [linked below – Initiative Petition] and find where it says “Repeal” or any form of the word.

- <https://joingrandview.com/2018/10/13/the-original-1989-green-space-ordinance/> The Original 1989 Green Space Ordinance
- <https://joingrandview.files.wordpress.com/2018/08/proposed-ordinance.pdf> Initiative Petition with Full text of the proposed ordinance

FAQs Statement: “... third, this proposed ordinance exposes the city to costly lawsuits, and all residents would end up bearing that cost.”

Response: Incorrect. Look at history. In 1990, after the 1989 Ordinance was enacted, a property owner (at the same 1000 Elmwood address) sued the City claiming the Ordinance constituted a taking and was unconstitutional. The City did not believe the lawsuit had merit, but decided to purchase the property to settle the case rather than have the case drag on for years.

Further down in the FAQs, it was mentioned the City “... agreed to pay the owner almost three times what he paid for the parcel.” What is missing here is context – it prevents us from knowing if the City got a good deal, or a bad deal in purchasing what ultimately ended up being parkland. An interesting side fact is that community members took it upon themselves to assist the City and contribute to the purchase of the disputed property.

Let’s put “...exposes the city to costly lawsuits” into context. In creating the overlay district in 1989, we had a major concession from the developer of Stonegate Village. That did not come without a price. That price was a concession from other property owners on the hillside to limit their development opportunities. We worked with those owners and were able to reach a consensus that has worked to the benefit of the entire community, not just those on the hillside. You see that in that in nearly three decades, there has only been one suit.

Today, five of the seven [to be “six of the eight” if Issue 31 should pass] of the property owners who have the most skin in the game of anyone else in this community have come out in support of Issue

31. Consider why they would willingly subject themselves to a “taking” as has been stated in another part of the FAQs. Additionally, what about the sixth property owner, who is placing his property under the restrictions? The potential sixth individual purchased an adjoining lot, removed the existing house and replaced it with landscaping, creating a more appealing open space. These are property owners who are giving to our communities. We need to acknowledging them for the foresight they have and the gifts they are bestowing. That should tell you something about what Issue 31 is all about. And the limits of any potential liability for the City.

You can get hung up in the “WHEREAS” clauses in the explanation of the reason an ordinance was created and lose sight of the meaning of the statement being highlighted. Take some time to consider this clause, from the 1989 Ordinance, which identifies that it is not just the five [potentially six] who have the most skin in the game with an interest, but it is all of us in this community:

- “WHEREAS, the development and re-development in the “Greenspace” area affects the character of the City as a whole and property values throughout the City and therefore is of interest to all residents of the City, not just those of the affected area.”

FAQs Statement: “Issue 31 deprives a taxpaying homeowner from doing what the city’s Planning Commission, Board of Zoning Appeals, and Building Department have all stated the homeowner is authorized by city code to do.”

Response: Incorrect. Issue 31 is a zoning issue, pure and simple. It is vitally important to distinguish the difference what owners of 1000 Elmwood are saying, what the City Officials are saying, and what is in the codes by which we must live – all of us, not just the owners who are leading this protest of Issue 31. This will be handled in its own section, with specific references to code and why it is important to the discussion.

WHAT IS THE GOODALE GREENSPACE OVERLAY?

FAQs Statement: “*If passed, this initiative petition would restrict the use of private property without owner consent.* One-third of the owners in the overlay oppose the no-build zone being proposed for the land they have owned and paid taxes on for years.

Response: Partially Correct. The first part of the statement, in bold italics [theirs], would restrict the use of property. This is no different than any other regulation that is passed that affects a property owner,

the most notable one being zoning, to which we are all subject. They chose to emphasize it because it is emotional and gets your attention. What happened when the 1998 amendment was passed? That accomplished the same thing. Crickets. That's all you heard. No big deal.

The second part is **incorrect**. Two of seven who oppose Issue 31 does not equal one third, it is actually 28.6 %. The other 71.4% have paid a similar level of taxes on their property and are supporters. Ask yourself why?

FAQs Statement: "Grandview isn't *that* place where neighbors "take" property from neighbors by circulating a petition. We have democratic processes that ensure the opportunity to be heard, and to have respectful dialog. We have public meetings where people who object to laws can come in and try to get them changed. The homeowners did not get a chance to be heard in opposition to this proposed ordinance. Nor has petitioner offered to purchase the land her proposed ordinance would deprive them of using."

Response: There are so many issues with this set of statements. They are purposefully using "*that*" [their emphasis] and "take" to improperly cast our community and an opponent as disingenuous and deceitful to create an emotional reaction. They continue to make this personal by referring to "... **her [emphasis added]** proposed ordinance ..."

The homeowners are factually **incorrect** by saying they did not get a chance to be heard in opposition to the proposed ordinance. What about this FAQs that was sent to "Civic Friends"; what about the "Protect Grandview" website; what about the mailing delivered by the U.S. Post Office; what about the yard signs placed in yards; are all those not means of getting your message out? The hearing is from the time this was placed on the Ballot until the election November 6th. This set of statements is not only offensive to our community, it is a blatant personal attack on an individual [singled out from the group of which she is a part] whose only action is to legally put forth an initiative for the community's consideration. Personal attacks have no place in a meaningful dialogue meant to address an issue.

FAQs Statement: Will we lose green space if this petition passes? Yes. Ironically, Issue 31 would **reduce** the current greenspace by removing all property south of Goodale and several lots between Broadview and Urlin. In addition, the petitioner proposes to carve out exceptions for 1050 Lincoln Road and for the Stonegate subdivision, reducing the 200-foot no-build zone for those properties to 55 feet and 150 feet, respectively; however, the petitioner is unwilling to allow the family on Elmwood hill to build 147 feet from Goodale.

Response: Incorrect. Here is an in depth explanation of the current Ordinance and what Issue 31 will do. These are resources you may use to follow the analysis:

- <https://joiningrandview.com/2018/10/13/the-original-1989-green-space-ordinance/> The Original 1989 Green Space Ordinance
- <https://joiningrandview.files.wordpress.com/2018/08/proposed-ordinance.pdf> Full Text of Proposed Ordinance
- <http://whdrane.conwaygreene.com/NXT/gateway.dll?f=templates&fn=default.htm&vid=whdrane:OHGrandviewhts> Codified Ordinances of Grandview Heights, Ohio (in the “Search” box enter the City Code number [i.e. “1151.04” without the quotation marks])

The 1989 Ordinance created new setbacks for "lots" on the North (Broadview to Wyandotte) and South (Grandview to Lincoln) Sides of Goodale Boulevard. City Parkland is **not** included in either the 1989 definition of Green Space or the Issue 31 definition. Efforts by the opponents to claim that Issue 31 takes away protection for City Parkland are not genuine, because Parkland is not currently included in the Green Space.

The current Ordinance defines the Green Space in terms of "lots." The term "lot" is defined in City Code §1133.02 (59) as:

“... a parcel of land occupied or intended for occupancy by a use permitted in this Zoning Ordinance...”

City Parkland is not occupied or intended for occupancy by a use permitted in the City Zoning Code. In fact, the City's Zoning Map makes clear that City Parkland South of Goodale is not in an RS-1 or residential district such that it is capable of being developed with homes for occupancy. Areas colored green in the City Zoning Map are specifically identified as Parkland.

- <https://www.grandviewheights.org/DocumentCenter/View/114/Grandview-Heights-Zoning-Map-?bidId=> City Zoning Map

The amount of "Green Space" differs between the existing Ordinance and Issue 31 because the existing Ordinance includes all of a lot along Goodale Boulevard while Issue 31 only includes that part of a lot that is in the "no build zone."

Although the no-build zone is 100 feet from Goodale, the current Ordinance includes the entirety of each lot. For example, if a lot is 300 feet deep, all 300 feet is included in the current definition rather than just the 100 feet subject to the "no-build zone."

Issue 31 defines Green Space only in terms of the "no build zone," which varies along Goodale Boulevard because of existing homes. With the same 300 foot deep lot, only 200 feet would be included in the definition of Green Space. Why is it important to include all of a "lot" in the definition when the

purpose of both the current Ordinance and Issue 31 is to establish zoning standards and restrictions including a "no build zone"? It isn't important. When comparing apples to apples ["no-build zone" to "no-build zone"], the difference is not significant.

By defining Issue 31 to “no build zone,” Issue 31 also removes some property or "lots" from the definition of Green Space, and there is a legitimate reason for this. Two lots South of Goodale between Grandview and Urlin are currently included in the Green Space, but there are already 2 homes on these lots within the 100 foot setback. In addition, 4 lots to the North of Goodale between Broadview and Urlin are also excluded from the definition of Green Space in Issue 31 because they too are either already developed within the existing 100 foot setback or cannot be developed because of other zoning restrictions. Why subject property to a 100 foot setback when already existing homes are built within the "no build zone"? What Issue 31 does is eliminate all the **extraneous** items in the current ordinance to get to the essentials for the green space. For a visual comparison, please refer to the link below:

- <https://joininggrandview.com/2018/10/19/map-compares-issue-31-and-1989-ordinance-no-build-zones/#more-386> Green Space Map

The Greenspace map on Protect Grandview should either be taken down or corrected and labeled as such. To leave it up uncorrected is a clear distortion of fact and should be considered as an effort to intentionally mislead those who seek factual information.

- <https://protectgrandview.com/maps>

BUT I THOUGHT RESIDENTS WERE ALLOWED TO INITIATE LAWS THROUGH A PETITION

FAQs Statement: The Ohio Constitution and the City’s Charter grant citizens the right to initiate legislative actions that Council would be authorized to enact. However, this proposed measure goes **beyond** what the Constitution and Charter allow Council to do. Specifically, Ohio law and the City’s Codified Ordinances expressly require all zoning or rezoning changes to first be referred to and considered by the Planning Commission in a public hearing, and to then have the Planning Commission’s recommendations be acted upon by Council in another public hearing. This proposed ordinance bypasses several steps, which deprives residents and affected homeowners of the legal requirement to obtain input from the Planning Commission and the public. In other words, the proposed ordinance does something that the Council is **not** authorized by law to do.

Response: Incorrect. Statements are made in FAQs that Issue 31 exceeds the powers set out in the Ohio Constitution or other Ohio laws and that it improperly bypasses steps are recycled arguments that were previously made by the City and rejected by the Ohio Secretary of State when he overruled the

City's protest to Issue 31. As the Secretary stated, Issue 31 came about in a legal and appropriate way. The documents referenced below identify the arguments put forth by the city, response by Petitioners Attorney, and why the Secretary of State rejected them, allowing Issue 31 to be included on the November 6th Ballot:

- <https://joingrandview.files.wordpress.com/2018/08/protest-grandview-heights-greenspace-overlay-initiative.pdf> Grandview Heights initiative petition [Protest Letter]
- <https://joingrandview.files.wordpress.com/2018/08/petitioners-response-to-ghs-protest.pdf> Response to the City of Grandview Heights August 7, 2018 Protest Letter
- <https://joingrandview.files.wordpress.com/2018/09/husted-decision.pdf> Secretary of State Decision (Re: Tie Vote on Municipal Initiative Petition)

Below is an additional reference taken from <https://joingrandview.com/> that includes the above links, provides the full and complete text of Issue 31 and the flyer used in its promotion, and a more succinct presentation of the efforts to place Issue 31 on the ballot:

- [The Trouble With The City's Protest of the Proposed Ordinance](#)

Here is the problem with the FAQs and the Protect Grandview website. We received the FAQs in an email on October 12th. The decision by the Secretary of State was public September 12th. Why was this misleading information included in an email sent a month after the decision was rendered? Why is it still on the Protect Grandview website under their FAQ as of October 23rd at 10:36 PM.?

WHAT IS THE BASIS OF THE OPPOSITION?

The argument being made is increasing the setback from 100' to 200' is a **Taking** of one's property rights. This ordinance was passed in 1989, nearly three decades ago. Where are all the property owners who have had the opportunity to file suit since this ordinance was passed?

In 1990, after the 1989 Ordinance was enacted, one property owner (at the same 1000 Elmwood address) sued the City claiming the Ordinance constituted a taking and was unconstitutional. The City did not believe the lawsuit had merit, but decided to purchase the property to settle the case rather than have the case drag on for years.

FAQs makes many claims about how the passage of Issue 31 will cost the City millions and millions or even hundreds of thousands to property owners if Issue 31 passes and someone will sue for a taking. Where is the documentation supporting their claim of costing the "... City millions and millions

or even hundreds of thousands to property owners if Issue 31 passes and someone will sue for a taking.” [Interesting note: they start out with “... millions and millions ...” then within the same sentence back down to “... even hundreds of thousands ...”] We did have one suit for a “taking” under the original ordinance. But we really don’t know if it was an actual “taking” because it was settled and never went to court.

We have already established Issue 31 is a zoning ordinance. One of the key components of the 1989 ordinance was the 100’ setback, with setbacks being a recognized tool in zoning. Think about it – each of us who are property owners have zoning requirements we must address if we are building a home or adding an addition. We may or may not like them, but they are part of the rules and regulations that guide the standards and development in ours and all other communities. They only become issues when one wants to challenge them, essentially saying they don’t apply to me, or I want to do something contrary to my neighbors and/or the community.

James Oberla, 1020 Westwood Avenue commented, “The green space overlay is more detrimental to our property value than this house will ever be. This is personal property; they want to build a house. I think the plan is very nice. The green space overlay was done under duress. The city purchased the property.” [August 8, 2018 BZA meeting]

James Oberla, among others, have expressed their displeasure with the green space overlay. And they have a right to do that. What the opponents don’t have a right to do is to make misleading or incorrect statements. There are those of us still around after nearly three decades who take exception to Mr. Oberla’s statement: “The green space overlay was done under **duress [emphasis added]**. We worked hard to arrive at agreement. You don’t have to just take our word for it. Read the “WHEREAS” clauses in the ordinance. You do not get those statements without having overwhelmingly wide spread support. Many of those statements in the FAQs have been discussed and refuted factually. Let’s take a look at 1000 – 980 Elmwood Avenue.

WHY HAS 1000 – 980 BECOME A FLASH POINT?

The owners of 1000 Elmwood Avenue had been trying for many years to split their lot. The intent was to use the new lot from the split to build a forever home. In many instances this would not be an issue, however due to the unique circumstances of where they want to build, longstanding guideline are in place to recognize the limitations.

The City's Planning Commission approved a lot split at 1000 Elmwood in April 2017. The lot was originally created and intended as “a” single family home site, just like all other home sites along Goodale Boulevard. The April 2017 approval was the **third** try for the property owners. The prior 2 applications were opposed by the City and were unsuccessful. The 2011 and 2016 Staff Report prepared by the City (obtained from the City via a Public Records Request) reflects that the City was opposed to the first 2 lot split applications for reasons that were consistent with the goals of the 1989 Ordinance and zoning standards:

- The lots along Goodale Boulevard consist of large single family home lots, and splitting 1000 Elmwood would result in a “non-conforming condition, and that the proposed lot is too small to be compatible with the existing development.”
- “An unconventional lot is proposed in what is otherwise a historically traditional neighborhood setting.”
- Putting a driveway on the Elmwood Avenue hill at its steepest point “presents a very unsafe situation, a condition that has been historically and consistently avoided there as there are no driveways on the steepest slopes of Wyandotte, Westwood, Elmwood, Broadview, and Grandview Avenues.”

A copy of the full staff report is available below. It is very informative reading:

- [Issue 31 Protects and Preserves the Green Space In the Face of the City’s Failure to Follow It’s Own Code and Guidelines](#)

Why did the Planning Commission approve it on the third try? What was materially different about the third application? The property owners increased threats of litigation? Nothing changed about the concerns outlined in the City's Staff Report. Are these actions reason to be concerned about the viability of maintaining this vital asset to our community? Why is the City opposing a re-zoning they could have easily done themselves? All valid questions when the City casts aside its own assessment that the lot split violates Code and Design Guidelines.

There should be concern about the city’s actions in the April 2017 lot split and appeal process. The City's Planning Commission's rules require a 15 days’ notice to adjacent property owners of an application for a lot split. The property owners at 1000 Elmwood mailed Certified Mail notices to adjacent property owners on **Friday, April 14, 2017**, a mere 5 days before the hearing on **April 19, 2017 [Do the math]**. This is not consistent with the Commission’s own rules for providing adequate time to allow residents to be heard.

In addition, vital information was withheld from residents following approval of the third application. The City failed to make the minutes from the April 19, 2017 meeting public until appx. 5 months after the time for appeal had passed. The City failed its residents in so many ways. The opponents claim there was no notice to them of Issue 31, but what about the lack of required notice and due process to adjacent property owners of the third application for a lot split that had been so controversial?

As to the argument that notice hadn't been given, the issue appearing on the ballot and the period up to the election is the notice period for residents to consider any issue on the ballot, including Issue 31. Again, this is consistent with the law and the process relating to resident led initiatives.

On August 8, 2018, the City's Board of Zoning and Planning granted what is called "aesthetic review" of the proposed plans at 980 Elmwood, the lot resulting from the split, not a permission to build.

Aesthetic review does not equal the granting of a variance to City Code that would permit construction, and it is not the equivalent of a building permit. In fact, in the year and a half since the lot split was approved, the property owners have not applied for a permit as of a couple of weeks ago. What does this tell you?

The minutes of the meeting are instructive. This was a portion of the testimony from the Hyde's attorney:

“It conforms in every way to the city's code. The city's code is the best evidence of what's in keeping with the character of the community.”

The owner's attorney for 1000 – 980 Elmwood Avenue seems to have faith in the city's codes – why doesn't the city?

Words like "taking" and "unconstitutional" get attention, something purposeful by the opponents of Issue 31. That does not make Issue 31 unconstitutional or a taking of someone's property rights.

In fact, the courts rarely overturn zoning ordinances because they are unconstitutional or constitute takings. The burden of an objecting property owner is very high. And, here, there is nothing that has been "taken" from the owners of 1000 Elmwood. They purchased a single family home site with a single family home on it. They had no constitutional right to split off the lot - it was against City Code and Design Guidelines as the City itself noted in its Staff Report. And, there is no constitutional right to build a house on a newly created lot. Think about it, who exactly is telling you there is a "taking" or that Issue 31 is unconstitutional?

The owners of 1000 Elmwood may have property rights, but one of them is not to take a single family home site, split it, and build a second home on it.

What about the property rights of all of the other residents of the Green Space? Included among them are the very things outlined by the City in its 2011 - 2016 Staff Report when it opposed 2 of the 3 lot split applications, but later abandoned its own Code and Design Guidelines in the face of litigation.

If anyone's rights have been "taken" here, it's the rights of every other property owner along Goodale Boulevard that were diluted when the owners of 1000 Elmwood intimidated the City into splitting the lot.

Here is a final thought from the Protect Grandview website:

“A final word: if it should be voted on and become a reality, there is a serious chance that the city would be liable to compensate for the taking of land. Why should the owner be responsible for taking care of that area, with no right to do with it as he pleases?”

<https://protectgrandview.com/coalition>

I have had two homes in Grandview, the home where I grew up, and my present home. They are in different parts of the city, with different zoning codes and applicable ordinances to accomplish different goals. Some of the things permissible in one area are not permissible in the other. In either instance, I have "... no right to do with it as [I] please ...", but I still have to take care of it. It is that bond that we enter into when we move into a community, or a specific part of that community that limits our right to do as we please.

Nineteen eighty nine was an inflection point for the specific area you live in and the entire community as a whole. A major development effort [Stonegate Village] that was going to decide how this part of Goodale was going to be developed was that inflection point. There was much discussion and a conscious was reached and agreed upon that had the effect of defining a new set of limits on what you could do. Those limits did not apply to you alone, they applied to all property owners within the defined area – you are all in the same boat. With limitations and acceptance of them, there have been tangible benefits, shared among your immediate neighbors, and because of the impact of decisions made, shared with the community as a whole.

Jump forward to current day. The area is facing another inflection point. It doesn't jump out at you the way Stonegate Village did in 1989, but it is no less important to the further development of Goodale. It comes in the form of setting a small precedent – carving out a portion of hillside and sticking a house in it.

The problem is if the precedent is established, it will begin to guide further development along the same lines. Instead of being an advocate for the principles established in the 1989 Ordinance, the City appears to be tossing them aside and advocating for creating the precedent. The majority of your neighbors recognize the danger and are supporting Issue 31 which will act as a check on development, forcing the issue not to necessarily stop development, but to return to the principles established in 1989 and again arrive at conscious about how best that development should occur.

You never had the right to do with it as you please. But you do have the right to work with your neighbors and the entire community to arrive at outcomes that are in the best interest of all.

CONCLUSION

It has been a lot of work, looking at information on proponents and opponents websites of Issue 31 in more than a week; putting these thoughts down in a respectful and organized way for others to understand the implications for not only the green space which we have all enjoyed for nearly three decades, but to help voters understand the issues and the significance of their vote.

I will admit, I am biased and feel blessed to have been a part of what has been an enjoyment for so many of our community. I have tried to be as factual as possible, raise questions for my readers to

ponder and dialogue with others. For those who may have questions or comments, my contact information is provided.

FOLLOW UP

Following actions taken to ensure major stakeholders were included in the conversation:

- The five property owners [with the inclusion of the sixth should Issue 31 pass] in support of Issue 31 within the Green Space Overlay were sent a copy of this response prior to its general release.
- The two property owners in opposition received a copy of this response on Wednesday, October 24, 2018.
- Copies of this response were sent to
 - <https://joingrandview.com/>
 - <https://protectgrandview.com/coalition>
 - <https://www.grandviewheights.org/Blog.aspx?IID=223#item>
- A request was sent to no.on.issue31@gmail.com [Citizens to Protect Goodale Greenspace] on Wednesday, October 24, 2018 asking the verified misinformation identified as “**Incorrect**” in this response be corrected on <https://protectgrandview.com/>
- A request was sent to <https://www.grandviewheights.org/> on Wednesday, October 24, 2018 requesting a link on their “Blog” to this response be provided to allow a balanced presentation by the City of the facts for Issue 31.
- Conversations were started with media outlets on Wednesday, October 24, 2018 to ensure voters receive the fact based information identified in this response.

Robert B. Claussen

**COPY OF THE ATTACHMENT RECEIVED IN THE OCTOBER 12, 2018 EMAIL
FROM JAMES OBERLA**

Greenspace overlay FAQs

What is Issue 31?

Issue 31 is an effort by a petitioner to block property owners from exercising their legal rights to use their property in the way that the City's building code allows. More specifically, it is an effort to limit one family's desire to build their home on land they have owned for almost a decade.

Issue 31 disingenuously suggests it is "saving the greenspace", but if you actually read the proposed ordinance, you will see that this is a red herring. First, the parcel that this homeowner wishes to build on has never been within the existing greenspace. Second, the petitioner's proposed ordinance actually **repeals** the existing greenspace. And third, this proposed ordinance exposes the city to costly lawsuits, and all residents would end up bearing that cost.

Issue 31 is **not** about lot splits or the size of someone's house. Issue 31 deprives a taxpaying homeowner from doing what the city's Planning Commission, Board of Zoning Appeals, and Building Department have all stated the homeowner is authorized by city code to do.

What is the Goodale greenspace overlay?

In 1989, the city increased the front-yard setbacks for certain properties along Goodale to preserve a green swath on both sides of the road. A setback is the minimum distance that a building or other structure must be set back from a street or road; the only way to get relief from a setback is to petition for a variance before the board of zoning appeals, which would only be granted if certain criteria are met.

In creating this overlay, Council defined this area as "all lots fronting on the north side of Goodale Boulevard between the center line of Broadview Avenue on the east and the center line of Wyandotte Road on the west and all lots on the south side of Goodale Boulevard from Grandview Avenue on the east and the City limits on the west". *All the*

affected properties were privately owned. Council increased the front-yard setback requirement to 100 feet, but anticipated that affected owners could request up to a 25-foot variance, meaning that someone could have built 75 feet from Goodale if the maximum variance had been requested and granted.

At that time, the overlay was supported by several, but not all, affected property owners. One owner sued the city because the overlay significantly restricted his buildable area. His suit claimed this new law deprived him of the right to use his land without due process of law (the right to be heard) or just compensation for the land. Short of a verdict against the city, Council agreed to pay the owner almost three times what he paid for the parcel. That land, which runs 132 feet north of Goodale, is the only publicly owned parcel on the north side of Goodale.

In 1996, Council amended the overlay ordinance to remove the suggested maximum variance. That ordinance remains in effect today (Codified Ordinance 1151.04).

The property of the family on Elmwood hill that has been granted the right to build on their newly split lot has never been within the greenspace overlay. The plans approved by the Board of Zoning Appeals require them to build 147 feet from Goodale, 47 feet *beyond* the greenspace requirement. They have not requested any variance from the requirement.

What's wrong with wanting to preserve greenspace?

The city will **not** lose green space if this measure fails. The Goodale greenspace overlay is not in jeopardy. At no time has the city discussed reducing or repealing the Goodale greenspace overlay. And no owner on Goodale has indicated to the city any desire to sell or to subdivide their land. In fact, these owners take pride in maintaining the natural beauty of the hillside. By contrast, the proposed ordinance would **repeal** the existing 100-foot front-yard setback, to replace it with a 200-foot no-build zone.

If passed, this initiative petition would restrict the use of private property without owner consent. One-third of the owners in the overlay oppose the no-build zone being proposed for the land they have owned and paid taxes on for years.

Grandview isn't *that* place where neighbors "take" property from neighbors by circulating a petition. We have democratic processes that ensure the opportunity to be heard, and to have respectful dialog. We have public meetings where people who object to laws can come in and try to get them changed. The homeowners did not get a chance to be heard in opposition to this proposed ordinance. Nor has petitioner offered to purchase the land her proposed ordinance would deprive them of using.

Will we lose green space if this petition passes?

Yes. Ironically, Issue 31 would **reduce** the current greenspace by removing all property south of Goodale and several lots between Broadview and Urlin. In addition, the petitioner proposes to carve out exceptions for 1050 Lincoln Road and for the Stonegate subdivision, reducing the 200-foot no-build zone for those properties to 55 feet and 150 feet, respectively; however, the petitioner is unwilling to allow the family on Elmwood hill to build 147 feet from Goodale.

What is a "taking", and why is this my problem?

Depriving a property owner of the legal right to use his or her land in the way the

building codes allow, without an opportunity to be heard at a public hearing, and without just compensation, is called a taking. The city could be sued by any affected homeowner, exposing it to legal and financial risk. The money spent on litigation, verdicts, or even settlements is money that would otherwise be available to the city for important needs that can serve all residents.

If passed, this initiative petition would restrict the use of private property without owner consent.

But I thought residents were allowed to initiate laws through a petition.

The Ohio Constitution and the City's Charter grant citizens the right to initiate legislative actions that Council would be authorized to enact. However, this proposed measure goes **beyond** what the Constitution and Charter allow Council to do. Specifically, Ohio law and the City's Codified Ordinances expressly require all zoning or rezoning changes to first be referred to and considered by the Planning Commission in a public hearing, and to then have the Planning Commission's recommendations be acted upon by Council in another public hearing. This proposed ordinance bypasses several steps, which deprives residents and affected homeowners of the legal requirement to obtain input from the Planning Commission and the public. In other words, the proposed ordinance does something that the Council is **not** authorized by law to do.

Petitioner claims the city has wasted money fighting this proposed ordinance.

The city must interpret its laws fairly and be a good steward of the public's trust. The city had a legal obligation not to place an unlawful measure before voters. Indeed, it is the petitioner's countless public records requests and efforts relating to this unlawful measure that have cost the city thousands of dollars.

Voting YES is a vote to repeal the existing greenspace overlay and replace it with a 200-foot no-build zone, against the will and the legal rights of affected property owners.

Voting NO defeats the proposed ordinance and preserves the city's Goodale greenspace overlay.