

**City of Columbus**  
**Public Hearing – Chapter 7A-800 Zoning Regulations Amendment – Required Residential Screening (PC-15-111)**  
**November 18, 2015**

The November 18, 2015 Public Hearing to receive testimony regarding the amendment to Chapter 7A-800 Zoning Regulations – Required Residential Screening was called to order at 7:56 p.m. by Chair Garth Sternberg at the City Hall. Present were Commission members Pam Wolowski, Jesse Preiner, and Jody Krebs; City Administrator Elizabeth Mursko, Planner Dean Johnson, and Recording Secretary Karen Boland.

Also in attendance were City Council members Denny Peterson, Bill Krebs and Jeff Duraine; Roger Nase, Pat Preiner, and Jon Wycistah.

**Sternberg:** So now we're going to have a Public Hearing and discussion: Chapter 7A-800 Zoning Regulations Amendment – Regional Residential Screening, pages 18 through 20. And, at this time, I'd like to ask the recording secretary to read the notice as published.

Notice was read at this time by the recording secretary.

**Sternberg:** Thank you. Dean?

**Johnson:** I will just say, briefly, this is the ordinance prepared by the City Attorney that you have discussed in previous meetings, and I think most recently made some adjustments to at your very last Planning Commission meeting. Uh, there were a couple of modest changes from the prior draft, but, aside from that, I, I don't know what else there is to say. I'd be happy to answer any questions.

**Sternberg:** Any questions for Dean?

**Wolowski:** None from me. I think we went over this one pretty good.

**Sternberg:** Okay. At this time I'd like to open the meeting, or, the hearing to the public. Is there anyone here from the public that would like to speak on it? Please come forward. And, if you could, just state your name and address for the record.

**Nase:** My name is Roger Nase, 6636 141<sup>st</sup> Avenue, Columbus.

**Sternberg:** Thanks.

**Nase:** Good evening . . .

**Sternberg:** Good evening.

**Nase:** . . . Planning Commission members, Planner, and, of course, our City Administrator. Yes, I do have some comments that I'd like to make regarding the, uh, buffer and screening

ordinance. Um, on October 14<sup>th</sup> the City Council, at the City Council meeting, it was spoken that the buffering, the upcoming buffering ordinance would address a buffer between the two incompatible land uses of commercial industrial and residential. We're not talking about vacant land here. This is, uh, residential property that people have their homes on and that they live on now. And, and just to most efficiently set the stage for that, and since it doesn't look like there's a big crowd of people waiting in line, I've got a three-minute audio. And that, I think, will be a lot more effective than me trying to describe what happened. Maybe. If I can figure out my fancy phone. Okay. This was the October 14<sup>th</sup> meeting.

**Mr. Nase played a recording off of his phone, transcribed below:**

*CC member, Jeff Duraine:* I noticed some of our neighbors again here recently and, uh, and there're still some concerns about the buffer.

*CC member, Bill Krebs:* That'll all be taken care of (unintelligible)

*Mayor, Dave Povolny:* Well, that's true, Bill, but, I'm a little concerned as well. There's really nothing stopping—four or five years from now, whenever that gets developed—from parking semis and basically moving that lot, so the northern neighbors would basically end up with no buffer. It's, I mean, non-permanent structures could be put right on the lot line, right, Bill, in the commercial zone? There's no setback for storage of things, and . . .

*City Attorney, Bill Griffith:* That's true today. One of the things that (unintelligible) buffer ordinance (unintelligible), which is something we're working on.

*Povolny:* Right, which . . .

*Griffith:* Absent that far forward, that suggests that . . .

*Povolny:* Right. I'm referring to that. I'm not too happy with that, but, um, and when do you think we'll have that buffer ordinance? That's got to go through the Planning Commission, and the hearings and all that?

*City Administrator, Elizabeth Mursko:* At the joint meeting there can be discussion as to what additional criteria you would like to add to that. (Unintelligible)

*Povolny:* 'Cause it can't be a 'We'll know it when we see it' ordinance. It has to be a 'This is what you need to provide between residences and . . .'

*Griffith:* Yeah. We discussed it this week on a conference call with Elizabeth Mursko and Jake Steen, who's working on it. And the present intent is to bring back, um, specific criteria that you could, you know, basically kind of a laundry list of things that you could employ, including fencing, planting, landscaping, and, you know, distance separation, that kind of thing. So, based on the input of the Planning Commission and the Council, you decide how much and what.

*Povolny:* If we approve this tonight, we're, is the land going to be grandfathered in to the existing buffer ordinances, which don't exist, or would it, whatever we approve in the future apply to these, this northerly lot as well as the, um, westerly side?

*Griffith:* The only property that would be grandfathered, are those that are already developed. So any property that's undeveloped would be subject to the new ordinances.

*Povolny:* Okay.

*Griffith:* It's unlikely that someone could get a development in through the CUP process before the buffer ordinance could be adopted.

*Povolny:* Okay.

*Duraine:* Uh, if you made this industrial right now, commercial, and you said you need a 300-foot buffer, wouldn't that be a taking of property? You couldn't actually put a distance on it, could you? Legally?

*Griffith:* Uh, the case law is where the, where the buffer is overly excessive—and that's a judgment call—but, when there's an excessive buffer, that is a taking. If it's a typical yard area type buffer—you know, if you have a 30-foot yard and your buffer is somewhere in that yard—that's not a taking. But if you have something like a 100-foot buffer or a 300-foot buffer, the courts have viewed that as a taking.

*Povolny:* So—off-topic a little bit—everybody's in the (unintelligible)

**Nase:** This is kind of funny. He asks a question if it's a taking if the watershed changes the rules from one rod to 100 feet, and if the City can sue for that property then. But, I'm sure he meant that in a jesting manner. So, you know, it was three minutes, and—it seemed like a long time—but, it would have been hard for me to, to say all that. So, to summarize, um, the City Council expressed concern that there was a zero-distance buffer between the newly rezoned CI and the property directly—um, residential property directly to the north. And that non-permanent structures, like semi-trucks and cranes, you know, over 13 feet tall could be parked and operated right next to the property line. Um, the Council discussed that the plan to provide this separation, uh, and other items—separation was referred to as a yard buffer by the City Attorney—um, would be addressed by the buffering ordinance we're here today to discuss in this public hearing. Uh, the City Attorney noted that 100-200 foot, um, buffers have been considered takings by, uh, by the courts. Um, but a standard yard distance buffer of 30 feet or so, would not be considered a taking, and could be implemented in this proposed ordinance. The Comprehensive Plan has a number of statements that supports the same idea. Uh, buffers are supported by the Comprehensive—the Columbus 2030 Comprehensive Plan—in several places. One is to protect, it states, protect residential areas from incompatible uses. And, this would be one way of doing that. Protect the rural character in the City. So you'd move from commercial industrial and you have some buffer to hit residential. It helps preserve that rural character. Maintain land use patterns which ensure compatibility and function of uses. Um, they're two totally different uses: uh, rural residential and commercial industrial. So adding some separation between them, does

help ensure compatibility. Um, there's also the statement in there that, in the Comprehensive Plan, that is, 'prohibit unplanned commercial or industrial uses from developing near residential areas.' And one more from the 2030 Columbus Comprehensive Plan is, 'minimize potential incompatibilities between commercial industrial and residential uses.' And, that certainly supports what we're talking about here, as far as, and what the Mayor was concerned about, which was they could park or put any non-permanent structures directly on the property line, and they would be visible, noticeable, and they would impact the residential property. So that's why he was asking, 'Hey, you know, what can we get in there for a setback or yard buffer?' So, Elizabeth, I, in tradition, I sent you an e-mail.

**Mursko:** Yeah. And the Planning Commission received it.

**Nase:** You, they already have it?

**Mursko:** The one you e-mailed me.

**Nase:** Oh. Before.

**Mursko:** I was just going to say, several weeks ago.

**Nase:** Yeah.

**Mursko:** Did you just e-mail me something?

**Nase:** Yes.

**Mursko:** Okay.

**Nase:** Well, not just. But, in res—not too long ago. So if you, could you pull that up? Otherwise, I can give you a hard copy of it. But . . .

**Mursko:** I can put it on the overhead.

**Nase:** It will probably be clearer. I remember last time it was not very clear.

**Wolowski:** Do we have that?

**Sternberg:** Well, that's the one that we had last week.

**Wolowski:** Oh, last time. Okay.

**Sternberg:** That's the one we had last time, right?

**Nase:** Um, it looks a lot like it.

**Wolowski:** Okay.

**Nase:** But, I made some changes, um, to, to how—because I know this is a difficult job. I’m trying to come up with an ordinance that’s specific enough, but, yet, doesn’t tie your hands in cases where you don’t want ‘em tied. And so, so I did, I did make, uh, the biggest change, which is on item 5, and, and we can, we can talk about that one there. But, starting at the top, the first item is the same as the one that, um, the one right here, where it says ‘of material and equipment.’ So, ‘The required screening shall block direct visual access’ and, what I added in there was, ‘of material and equipment.’ And, so what’s my rationale for that? So, my rationale for that is that the East Bethel ordinance, Section 23.1.H. and 23.2.A and, similarly, the Forest Lake ordinance 153.145.A and 153.146.A applied this type of terminology. Um, one of those two used exactly this terminology. I don’t remember which one it was. Um, and the reason is, is you could put up a six-foot fence, and it could be useless against somebody that had cranes or semi-trucks or . . . So, the intent of a screening ordinance is to provide screening, um, for, for the residential properties. So, so blocking direct visual access of the material and equipment accomplishes that, and it’s a precedence found in East Bethel and Forest Lake that use that type of terminology. And I’d say one uses that exactly. So, you, what are your thoughts on, on that, and, I mean, do you agree that screening is really designed to, to protect the residential owner from looking at something that he shouldn’t have to look at, or something ugly on the other side—whether it’s another residential neighbor’s house or on the commercial industrial side?

**Sternberg:** Yeah, it, I mean, I’ll speak. I, I think that we’re trying to protect the residential homeowner from having to see such items. The problem I have with material and equipment, you’ve now limited it to material and equipment, and you’ve not covered anything else. The way it’s written, ‘direct visual access,’ is direct visual access. And I prefer that over ‘of material and equipment.’ But that’s just my opinion.

**Nase:** So, when it says ‘direct visual access,’ you’re saying, then, if, if the person on the residential property can see the semi-truck, the crane, or the pile of dirt or whatever, then he has direct visual access, and that would be in violation of, of this ordinance.

**Sternberg:** I think it’s our intent to—I don’t know—limit what you see from a neighboring commercial industrial property or use.

**Nase:** Mm-hmm.

**Sternberg:** I don’t know that, you know, a six-foot wall is gonna do that. You know, if it’s a crane, you’re going to need a hundred-foot wall.

**Nase:** Right.

**Sternberg:** And that’s not realistic. I don’t know that having 35 feet is going to limit your—you know, more land taken from the commercial industrial property owner or you or whoever—is going to help limit seeing a crane. Um . . .

**Nase:** Well, the angle does help considerably. As it gets farther away, the angle that you’re looking at. As long as the fence is over your eye height, you’re going to be looking up. And so

that will help to eliminate some of those taller items from being seen. But I think, I don't know, what else would you, what would you say is not covered by material and equipment?

**Johnson:** Structures.

**Krebs:** Yeah, structures.

**Nase:** But structures have a natural setback . . .

**Johnson:** They can be 35 feet.

**Nase:** Off the property line.

**Krebs:** They can be 20 feet.

**Johnson:** And, to go beyond that, I think as the attorney was getting at, starts getting in the realm of taking. So, if you allow 50-foot structure, or, in the case of even agricultural uses, you may have elevators and things that are allowed to go up to 95 feet. There isn't any, there isn't any fence that's going to do that. And I think, honestly, as the chairman just said, at the last meeting we thought, 'Well, you know, our intent is to try and soften that impact'. It's, it's not going to block everything. But, I, I think if one of the elements you're getting at is, 'I want the visual barrier, but I also don't want that storage in that setback area', that's a debate that, that they can take. But, if the barrier is good and you can't see the storage because it doesn't go over that, what's the value or the purpose in eliminating it? And I, I think part of . . .

**Nase:** Eliminating what? I'm sorry.

**Johnson:** If, if there is an attempt to create . . . There is a big difference between buffer and screening.

**Nase:** Right.

**Johnson:** Because screening can be literally almost one or two dimensional, but a buffer is, connotes an area. And, while the terms have been used interchangeably at times, uh, I want the Planning Commission to clearly understand that if there is a need to restrict certain activities, there are a number of sections in the ordinance that would have to go. Right now, we allow parking in half of the—or, it's either half or one-third, I'd have to look. But we allow parking routinely in half of that setback area. And if that's for commercial vehicles, a bank, or a grocery store—I don't know that anybody's intent would be to take that property, because . . .

**Nase:** Well, we're, we're skipping ahead, because the only—and I apologize there for . . .

**Johnson:** Well, I'm not . . . I'm not looking only at your backyard. I'm looking at four different zoning districts . . .

**Nase:** I agree.

**Johnson:** . . . where we have this conflict.

**Nase:** Yup.

**Johnson:** And, so, I want to be certain if we're talking about a buffer versus a screen that everybody consciously understand that, what that is.

**Nase:** I agree 100%. But we get to that on item number 5, and we're on item number—we haven't gotten to 1 yet.

**Sternberg:** Well, let's, we're going to have to speed it up here, because we've got another public hearing coming up here, so we have to speed it up. So, I don't want to beat the bush all night about material and equipment.

**Nase:** Okay.

**Sternberg:** I mean, I don't understand why you really want it restrictive. I mean that's more restrictive than our ordinance, and I don't understand the purpose.

**Nase:** Well, as long as you're saying that if, I think that this is more restrictive, and that this helps me. Otherwise, they could put up a six-foot fence and then say well, that provides the, meets the requirement of this. Because 'direct visual access' doesn't say of what. And, so, if there were a six-foot fence there and there was a semi-truck pulled up—like Mastell's got 'em lined up across the property line—um, would, would that be in violation of this ordinance?

**Sternberg:** If there was a six-foot fence there?

**Nase:** Yup. But they're 13-foot six high. So if you say material and equipment, it's obviously 'yes', and they'd have to pull it away, and so I don't have to look at it. But, otherwise—I mean if you're saying it's 'yes', then, then, then I'm, I'm more reassured. But, I wasn't sure of that.

**Sternberg:** I'm not going to say yes, because, like I said, I don't know that, you know, that you're going to be able to screen everything 100% of the time, if it's a crane or a 50-foot ready-mix, portable ready-mix tower or something of that nature. I mean, it's commercial industrial uses. That's, you know, that's what the land is intended for as a use.

**Nase:** So, it's pretty incompatible with, with residential, so, maybe then, that's another reason to move it farther away. But, so I like the idea of 'material and equipment', because I think that that, that helps the residents, and, and if there is an exception to that, maybe they can put the boom down on the crane, maybe they can move the trucks a little bit farther away, so . . . Or maybe they just go taller with the fence.

**Sternberg:** Right.

**Nase:** I mean they can go with a ten-foot fence or a twelve-foot fence, or, I don't know. But, if they do go taller with the fence, then I don't know if there is, I guess I have . . . Okay, so let's, we'll move on from that one.

**Sternberg:** Yeah. Let's do that.

**Nase:** So, going on to item 1, and there aren't too many, there's only three really. Um, item two there is, uh, 'Maximum fence or wall height of eight feet.' Um, so, it has to be a minimum of six and I said a maximum of eight. Um, and the reason being, is that I didn't want to have, or I don't think any resident would want to have a 20 or 30-foot prison wall, or, you know, whatever you want to call it, they'll, they would need to look at. So, um, but I do say, fine, if they need more height, they can put it on a three-foot berm or put it on a berm, and then you can still go another eight feet with the fence. So, so that allows you to keep going higher, but not with, not with just this big wall. Um, so then the next item, on item 4 there. Oh, first of all, on item 1, there was a note that said—and I took it off of here. I've deleted it—that said it has to be six feet high, and then it said, 'unless otherwise specified.' And, so, other surrounding cities do not include terminology like, 'otherwise', 'unless otherwise specified' in their similar ordinances. And, what are the limits to 'unless otherwise specified' on that six-foot fence height?

**Johnson:** In some instances, in conditional use permits, we may increase that interval. It's never been decreased. Is that where your, is that why you're asking the question?

**Nase:** Yeah. So, I mean, could it—it could be zero if you look at it . . .

**Johnson:** I don't disagree, but, I mean, that defeats the entire purpose of having a whole section within the ordinance directed to this.

**Nase:** I, I'm happy to hear you say that. I wasn't sure of . . .

**Johnson:** Well, I, I didn't write this, and I'm, I'm going to caution the Planning Commission about making changes that the City Attorney drafted, because I don't have to defend him He's going to have to agree to these types of changes, not me. So, I can't tell you whether a specific type of wording—they always correct my stuff, so I know they have a way to speak. I, I'm leery about changing it. But, I will say, from my perspective, if we were to go to a meeting and say, 'I'm sorry, that's got to be an eight-foot fence, because the topography dictates it,' or whatever, if that provision's not there, then we may not have the same strength in that argument.

**Nase:** It says it has to be six foot minimum in your . . .

**Johnson:** Unless.

**Nase:** It says minimum already though.

**Johnson:** Yup. I, I understand. Your concern is . . .

**Nase:** So, what does the 'unless otherwise specified' do for you?

**Johnson:** Uh, I, I, I'm not going to argue with the attorney, why the attorney would do this. But, it's, no, I'm not even going to say anything.

**Nase:** No, but you see, what my point is, is that if it says six foot minimum, you could go, always go higher. That's, that's perfectly within your, um, limits or rules. So the only reason you'd put in 'unless otherwise specified' would be to go lower. 'Cause you can already specify higher. So that's why I just didn't see why it made sense in this application, where you have a minimum value that's established.

**Johnson:** And, and I don't, I'm not, I'm just not going to answer, because I, again, . . .

**Sternberg:** Yeah. We, all we can do is take your comments, Roger, and then, we'll have to take them into consideration. So, if you want to just proceed now with the rest of your comments, and then we can hash it out up here, and talk about the attorney and all that stuff.

**Nase:** It's too bad the City Attorney isn't here, so he can talk to some of this, but, uh, um, so the next one is on 'required screening shall be at least 95% opacity', and, uh, or opaque. And, um, and, again, this one said, 'unless otherwise specified.' So, so what exceptions do you envision would be used here?

**Sternberg:** And, moving along to number 5, or, you've got number 4.c. in there?

**Nase:** No. I was asking a question on 4. So, on 4, it says 'unless otherwise specified' right now, for the 95% opacity. So, what do we think that, what do we think that would mean? What would, what exceptions would you take? And, do you agree that it could vary between 0 and 100 if it says 'unless otherwise specified'? And, that's not a clear rule. That's not testable. That's not defensible. You could pick one for one and something for another. So, um, there's no such limits as that. Uh, in uh, I'm sorry, there are no such limits and, as such, this is not a clear requirement. And, unless specific criteria are established to determine why it would be more or less, um, the 'unless otherwise specified' should be removed. Surrounding cities, other surrounding cities do not include 'unless otherwise specified' in their terminology for similar requirements. Okay, now going down to 5, we have, uh, and this is where I've added. And, I'm trying to address this, and make this as narrow as possible, so that it doesn't affect the other three types of commercial zoning, and, and it would be, um, have a least impact, except for those people that are significantly impacted. So, buffer yards or areas, like the City Attorney was talking about in the audio that I had, where they could have a 30-foot, um, yard buffer, uh, so 'shall provide a commercial' – 'buffer yards and areas shall provide, be provided by commercial industrial zoned property which abuts residential property as a result of a CI expansion, where abutting residential property was owned by someone other than the owner of the CI property.' And so, it only affects commercial industrial, and it doesn't affect someone who, let's say, like a Joyer or like a Blake Well Drilling, where, if they own the property next to them, they don't need to put in a buffer. But, if you expand the CI district into residential area, and the owners don't own that residential property, then what this asks for is, there shall be a setback of at least, you know, 30-35 feet in width to screening, and with a description of how that is measured—measured to the center of the berm or planting or to the nearest side of the residential fence or wall, which

shall extend along the adjacent, and be adjacent to the entire length of the common property line shared with the residential property. So, so this is very specific, and, and the reason we have it in there, is, is, or the intent, is to provide buffers to those impacted by CI expansion. And when I say that, it's different than someone who goes and buys property next to commercial industrial. So, if you do that, you know what you're getting into. You know that you're purchasing that property for less, because it's next to commercial industrial. So, you're taking advantage of that. But, for these people, where they didn't have a choice, where the expansion was pushed up to their property line, this gives them some yard setback to help mitigate the damages.

**Sternberg:** Thank you, sir. Anyone else . . .

**Nase:** So . . .

**Sternberg:** Are you, are you done?

**Nase:** Um, let me just check. I do think . . . Yeah. So I was wondering, so what is the next step in this here?

**Sternberg:** Well we—the next step for me is, I'm going to ask if there's anybody else here from public open forum, once you leave—or, for the public portion of the meeting. If there's nobody. . .

**Nase:** No, but I mean, as far as the, this ordinance goes.

**Sternberg:** That's what I'm getting to. Then we close the meeting, the hearing. And then we sit here and deliberate amongst ourselves, taking into your, you know, your points here, points of, uh, consideration. And then we make a recommendation either for approval or disapproval to the City Council. And we vote on it. Then it goes to the City Council next Monday.

**Nase:** But don't you really need to talk to, you know, we referenced that the City Attorney made a lot of this. Well, he wasn't here to represent those questions that we had today.

**Sternberg:** It's actually all on public record already.

**Nase:** Right. But how can you vote without knowing which way, which way he would say it would go, depending . . .

**Johnson:** May I speak?

**Sternberg:** Go ahead.

**Johnson:** Planning Commission is charged to make a recommendation to the City Council. The City Council can take it, tear it up, redo it themselves. So, they will likely make some sort of decision tonight or may pass and deliberate and it'll go to the City Council. It's up to us—Elizabeth and me—to make certain the City Attorney gets these comments.

**Nase:** Okay. All right. Well, thank you very much.

**Sternberg:** Thank you.

**Nase:** Have a good evening.

**Sternberg:** You too. Anybody else from the public that wants to speak on the matter? Okay. At this time, I'm gonna close the hearing with the right to reopen if it becomes necessary.

Hearing closed at 8:28 p.m.

Respectfully Submitted:

Karen Boland, Recording Secretary