

BEAVERCREEK CITY COUNCIL  
REGULAR MEETING May 26, 2009 6:00 p.m.

Mr. Beecroft of the Bikeway Advisory Committee presented the City of Beavercreek with a plaque from the Bike to Work Week Challenge that was sponsored by City of Beavercreek Parks, Recreation and Culture, Greene County Parks and Xenia Parks and Recreation for having the most employees involved.

Mayor Vann presented Certificates to the graduating members of the Youth Council including Charlie Ebersole president, Chelsea Brown vice president, Alicia Powers treasurer and Emily Dale publicity chairperson.

PRESENT: Mr. Hadley, Mrs. Howard, Mr. Jarvis, Mr. Leonard Mr. Petrak, Vice Mayor Giambrone, Mayor Vann

ABSENT:

Mayor Vann called the meeting to order followed by roll call.

Mr. Petrak led the pledge and a moment of silence.

Mrs. Howard MOVED to approve the agenda; it was seconded by Mr. Jarvis. The Motion PASSED by unanimous voice vote.

Mr. Hadley MOVED to approve the amended minutes for May 11, 2009, seconded by Mrs. Howard the Motion PASSED by majority voice vote.

PRESCHEDULED SPEAKER

Youth Council Update

Felicia Hall spoke about the Youth Development Advisory Committee and the learning experience they have had this first year in the organization. She spoke about the appointments to the committee and recommendations for changes. She reviewed what the members had brought to the committee and the events that were sponsored with their help by the Youth Council. There was a request to change the ordinance on appointments, to allow the Youth Council use C.I. Beaver Hall free of charge, hire a student intern and to send youth and advisors to the Search Institute Annual Conference in Cincinnati.

Mr. Leonard MOVED to discuss these items at a work session, seconded by Vice Mayor Giambrone it was approved by unanimous voice vote.

PUBLIC HEARING – PUD 98-9 SSP#10 College Park South

Clerk Bucheit read on an application filed by Mills Morgan, 3500 Pentagon Blvd., Beavercreek, OH 45431. The applicant requests specific site plan approval for 9.3925 acres of land to allow for the construction of three office buildings totaling approximately 166,000 square feet located at the northeast corner of Park Overlook Drive and Hibiscus Way. The property is further described as Book 1, Page 10, part of Parcel 25 on the Greene County Property Tax Atlas.

Mr. McGrath stated the applicant is requesting approval of a Specific Site Plan for 9.4 acres of land located within MX-PUD 98-9 Willow Creek that would allow for the construction of three professional office buildings totaling approximately 166,000 square feet.

Planning Commission recommended approval of, and City Council is in the process of approving, a PUD Amendment to remove the requirement for a minimum of 20 acres of medium-density residential development within this PUD. The proposed amendment would change the requirement of a minimum of 20

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acres medium-density residential to a maximum of 25 acres that would free up some of the land within this zoning district for additional office development. This application is running concurrently with the proposed PUD Amendment to the existing zoning for the site. A condition has been added to this application that would make the approval of the Specific Site Plan contingent on the PUD amendment being approved and becoming effective.

The applicant is meeting all minimum setback requirements for the PUD. The applicant is showing a minimum 50-foot building setback for the building closest to the residential development to the east and a 20-foot parking setback along the eastern property line.

The building design is very similar to the buildings found within College Park that have recently been constructed. The applicant has submitted architectural and color elevations for the building at the northwest corner of the proposed Specific Site Plan, as this is the building that will be constructed first and construction will probably start soon after the appropriate approvals have been granted by the Planning Commission and City Council. Staff has added a condition that the remaining two buildings be similar in design to the building submitted for your consideration. Staff will review and have to approve the compatibility of the future buildings with the elevations submitted with this application. Should there be any discrepancy between the applicant and the Planning staff as to what constitutes compatibility, the building(s) shall be brought forward to Planning Commission for their decision.

The applicant is proposing two access points into this development. The first access point is off Hibiscus Way and will align with the Lofts of Willow Creek access point to the west and the second is a right-in and right-out only on to Park Overlook Drive. The second access point is limited to right-hand turning traffic movements because of the median located on Park Overlook that was constructed with the roundabout.

Staff worked with the applicant to add additional landscaping along the eastern edge of the development to better screen the project from the residential development to the east. Staff also had the applicant remove a few parking spaces to the south of the proposed 3-story building in order to protect some of the existing vegetation located along the shared property line with the residents to the east. The interior landscape design and the proposed streetscape improvements along Hibiscus Way and Park Overlook Drive well exceed the minimum standards outlined in the Landscape section of the Zoning Code.

All stormwater management concerns shall be addressed by the applicant per the direction of the City Engineer, prior to the release of a zoning permit for the building. The applicant is proposing a wet pond at the southeast corner of the development. Staff has added conditions that the pond has a fountain to ensure proper circulation of the water within the pond.

Staff is looking for consistency in design with the surrounding developments in this part of town and is requiring the fixtures be the same as or consistent with the fixtures currently in place within the rest of the Pentagon Park and College Park development. A condition has been added, at the recommendation of the City Engineer, to allow for a Special Assessment Lighting District for operation costs only, if deemed necessary.

The applicant has asked that signage be approved as part of this application. Wall signage would be permitted on the north, west and south elevations of the future three-story building and the proposed two-story building located on the northwest corner of the development. The applicant will be permitted wall

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signage on all four elevations for the future two-story office building located at the southwest corner of the project. The wall sign on each elevation shall not exceed 100 square feet. The motion also allows for ground signs at the entrances for the development. The Planning Department shall review and approve the design and location of the signs prior to the issuance of a zoning permit for any signage related to this development.

There being no public input the Public Hearing was closed.

Vice Mayor Giambrone asked Mr. McGrath if the changes in the landscaping had addressed the citizens concerns. Mr. McGrath stated that he had spoken to one gentleman and his concerns had been addressed and they would address any other questions.

Mr. Leonard liked the idea of this property switching from residential property to office use and stated that it was the best use.

Mr. Jarvis asked why there was no entrance on the north elevation and wondered if that was intentional. Mr. Stolfo stated that the north side faced the apartments and they did not want anything on that side of the building to interfere with the residents.

The vote will be done later in the meeting after Ordinance 09-5 is passed.

#### PUBLIC HEARING – PUD 06-6 SSP#2 Mission Point

Clerk Bucheit read on an application filed by MV Commercial Development LLC, 4000 Miller Valentine Court, Dayton, OH 45439. The applicant requests specific site plan approval for 7.37 acres of land to allow for construction of a 94,701 square foot office building located on the south side of Colonel Glenn Highway (south of the Air Force property) and west of I-675. The property is further described as Book 1, Page 3, Parcel 7 on the Greene County Property Tax Atlas.

Eric Yo of the Miller Valentine Group stated that Mission Point was a 130 acre Mixed Use PUD. This is being designed to support the defense contractors industry for Wright Patterson Air Force Base which is the first or second largest employer in Ohio and is the driving economic force in this area. He is requesting to construct the second 90,000 sq ft building.

Mr. McGrath stated the applicant is requesting specific site plan approval for a 94,701 square foot, 3-story office building on approximately 7.37 acres of the 134.65 acre track known as Colonel Glenn Land Development Planned Unit Development, also known as Mission Point.

The Ordinance associated with this rezoning was approved by City Council on July 23, 2007 and by Planning Commission on December 6, 2006. The PUD rezoning allowed for 134.65 acres of development comprised mostly of office uses with hotel, retail and possible residential uses to help support this large scaled office development. More specifically, the PUD calls for a minimum of 70 acres of office development with a maximum of 1,000,000 square feet of office buildings, up to 150,000 square feet of hospitality/hotel uses, a maximum of 50 acres and 300,000 square feet of retail development, and a small residential component along the southwestern portion of the project.

The applicant is seeking approval of a 94,701 square foot office building located in the far northwest corner of the PUD. The office building and related parking area will be located on 7.37 acres. A portion of the proposed parking lot is located over top of a portion of the detention pond for the previously approved Building One of Mission Point. The new ponds will be sized accordingly to handle

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all stormwater runoff caused by this proposal as well as account for the loss of stormwater detention of the previous approval. The landscaping plan includes the use of trees, shrubs, ornamental grasses, perennials and ground cover to enhance the overall site. In general, staff is pleased with the mixture of landscaping, and feels that the overall plan will enhance the site.

The site plan includes three access points to the proposed site. There is a right-in/right-out access point that will be along Mission Point Blvd. This access point will most likely be the most heavily used entry point into the site and will most likely be adjusted for full movement. Another access point will be located off the access road that was constructed for Building One. This access point lines up directly across from Building One's primary access point. The third access point will be on the southern end of Building One's access drive, and will also be a full access point. This point will be constructed of a heavy duty concrete to ensure its integrity during delivery, as this is the access point at which deliveries will be made to the loading docks.

The applicant is currently working with a potential tenant of this building and has not received all final comments from the prospective tenant that may need to be incorporated into the site. Staff has added a condition that should the proposed building location change on the site; the applicant shall apply for and receive an incidental modification approval of the site plan by the Planning and Zoning Department prior to the issuance of a zoning permit for the building. All conditions of the Specific Site Plan shall remain in full force and effect and any contradictions between the conditions of approval and the final design of the site, if significant, as determined by the Planning Director, shall be approved by the Planning Commission as a minor modification.

It should be noted that the proposed building almost completely mirrors the design of the existing Building One. The building is a 3-story structure that is approximately 45 feet tall. The building incorporates the four sided architectural features that are required within this PUD with the use of glass, brick, and EIFS on all sides of the building. The east elevation will have the main entrance, and therefore will be the front of the building. There is a gray EIFS accent tower in the front of the building. On the south end of the building, opposite Col. Glenn Highway, is a single bay loading dock. As noted on the plans, the loading dock is painted to match the adjacent EIFS.

This condition will allow the applicant some flexibility in working with the tenant and still remain competitive in the process of securing the prospective tenant for the development. The condition would still allow the applicant to continue working with the prospect and would allow them to continue to assure the potential lessee that their aggressive time frames can still be met.

#### Public Hearing

Frank Feчек of 4308 Kemp Road stated that this project abuts his property on the northern property line. It is his continuing concern that the access road should be limited to emergency vehicles only. He asked if a barrier could be placed at the end of the road once they finish the water line so that all the crews can not use it as a cut through for lunch traffic, he said that it is a blind entrance onto Kemp Rd.

Vice Mayor Giambone stated that the map clearly shows the road as emergency access and asked Mr. McGrath to explain. Mr. McGrath stated it was an ODOT access that is being used as emergency access and is a condition of the zoning and he would speak to Miller Valentine and the Fire Department to see if there was some sort of break away gate that could be installed there to stop other traffic and possibly a gate by Kemp Rd.

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Mr. Leonard was concerned that they were being asked to approve a Specific Site Plan and they don't even know where the building is going to be located or how it will be oriented and felt that it was a major modification rather than an incidental modification. Mr. McGrath stated that right now it states if it moves less than 25 feet it is a minor modification. He said they have no incentives for businesses here and he is trying to help by cutting down on the time frame for the legislation to help keep them competitive because Miller Valentine is concerned that if they get a tenant the time frame for getting the building ready could exceed the time they have. Mr. McGrath stated that if it is significantly different they have the conditions to come back to Planning Commission.

Mayor Vann asked Mr. Yo to speak about the LEAD certified building. Mr. Yo stated that he believes that this is the first spec building in the Dayton Region to be LEAD's certified to be a green building and stated they will have a green focus for the entire park. He stated that they have had a lot of rave reviews not only for the look and design but also because it is an appropriate stance to take at this time to try to conserve energy and power. They have also just about completed a walking trail along the water with benches for the public to enjoy.

Mrs. Howard MOVED to approve PUD 06-6 SSP#2 Mission Point.

"I move, for the purpose of taking administrative action, approval of a PUD Specific Site Plan for Mission Point, PUD 06-6, SSP #2, on the basis that City Council finds the facts submitted with the application and accompanying materials, and modifications, amendments and supplementary conditions satisfy the standards and criteria for PUD Specific Site Plan approval as per §158.066 of the Zoning Code. Supplementary conditions required of this approval shall be as follows. I further move that this motion with all conditions be fully recorded in the minutes of this Council meeting."

1. The approved site plan shall be the plans dated "Received May 20, 2009" except as modified herein.
2. The approved elevation drawings shall be the plans dated "Received May 20, 2009" except as modified herein.
3. Materials and colors shall match the existing materials and colors used on Building #1 within this development. Should the applicant propose different, but similar, materials and colors for the building, material and color samples shall be provided for the building and shall be reviewed and approved by the Planning Department prior to the issuance of a zoning permit.
4. All building mechanical equipment is to be screened from all directions with architectural features (roof forms or parapet walls) for each building. Metal screening will not be accepted. Pad mounted equipment must be screened with landscaping and/or masonry walls and no interference with traffic control signs and/or lines of sight will be permitted.
5. Final cut sheet details and photometric plans for the lighting of the site shall be reviewed and approved by the Planning Department, prior to the issuance of a zoning permit. The light fixtures used in the plans shall be the same fixtures used on Building One within the PUD.
6. All pole-mounted lighting shall be located within a landscaped or concrete island and shall not be permitted to be located within any designated parking stall for the site. This shall be reflected on the photometric plan prior to the release of a zoning permit.

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7. There shall not be any downspouts, ladders and storage areas visible on the exterior of the building.
8. The traffic flow arrows and stop bars shall be painted per the approval of the Engineer's office.
9. A PUD Agreement must be signed by the owner of the building, and a bond or letter of credit must be submitted prior to the issuance of a zoning permit for any portion of the project, for the purpose, but not the sole purpose of insuring the installation of landscaping. Said bond or letter of credit must meet the requirements of the City's landscaping and screening regulations.
10. Perpetual maintenance of landscaping shall be provided and any dead or diseased materials shall be removed and replaced with similar types, species and sizes as originally planted, within three months weather permitting.
11. Debris and trash shall be routinely collected by the owner from the parking lots and grounds of all areas of the project, including the stormwater drainage facilities. The City reserves the right to require more frequent collection as necessary.
12. All concerns of the City Engineer, Fire Department, Sanitary Engineer and the Planning Department shall be addressed and approved prior to the release of a zoning permit.
13. The parking lot shall be kept in good condition. The City Engineer reserves the right to determine if the parking lot pavement condition is in disrepair and has not been maintained in a commercially acceptable condition, and that improvements are required. Those improvements shall be completed in a timely manner to the City Engineer's satisfaction.
14. The exterior of the building shall not be painted or altered in any way that varies from the approved elevations adopted with this approval. Any changes shall be reviewed and approved by the Planning Department, or if determined necessary by the Planning Director, by City Council and/or Planning Commission.
15. All trash collection containers shall be screened from view and enclosed within a permanent dumpster enclosure or completely kept within the building. Any dumpster enclosures shall be constructed of materials to match the building. The final location of the dumpster shall be reviewed and approved by the Planning and Zoning Department prior to the issuance of a zoning permit.
16. No portion of this building may be occupied for the first time or reoccupied later until and unless an application of a Certificate of Zoning Compliance has been submitted to the City by the property owner or by a prospective occupant. No such occupancy may occur until the application of Certificate of Zoning Compliance has been approved and issued by the City.
17. All man-doors, service doors and loading dock doors shall be painted to match the color of the building as to blend in with the proposed facade.

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18. Should the proposed building location change on the site; the applicant shall apply for and receive an incidental modification approval of the site plan by the Planning and Zoning Department prior to the issuance of a zoning permit for the building. All conditions of the Specific Site Plan shall remain in full force and effect and any contradictions between the conditions of approval and the final design of the site, if significant, as determined by the Planning Director, shall be approved by the Planning Commission as a minor modification.
19. Should the signage for this building fall within the parameters of the wall signs approved with Building One, staff will review and approve the wall signs prior to the issuance of a permit. Should the sign proposal exceed the parameters established with Building One, then the sign package shall be reviewed and approved by Planning Commission as a minor mod.
20. There shall be two handicap parking spaces added to the east side of the building across from the main entrance to the building.
21. The location of the western most access into the parking lot from the shared access drive is subject to final approval of the Planning and Engineering Department prior to the issuance of a zoning permit for the building.

Seconded by Vice Mayor Giambrone it was approved by unanimous voice vote.

#### PUBLIC HEARING (Continued)-Zoning Code – 158.100 to 158.134

Mr. McGrath stated this is a continuation of the First Reading that was continued at the last meeting. This is the third of five public hearings on sections of the Zoning Code update which covers sections 158.100 to 158.134. Some of the changes include additions and modifications to solar energy requirements as well as wind energy which is gaining popularity. They also addressed Ham Radio Towers on requirements for guide wires and appropriate heights. There were changes in temporary sales, outdoor sales to allow for Farmers Markets in the summer in appropriate zoning districts. One of the most significant changes is to accessory structures, some of which came from Board of Zoning and the variances that they were seeing continually. Other changes were made to swimming pools, drop off boxes and off street parking.

#### Public Hearing

David Wilkinson of 1489 Lemke Rd was concerned that parking would not be permitted on lawns at all. He stated that he did not use it but it was nice to be able to use when needed for family gatherings. Mr. McGrath stated that front yard parking was already addressed in an ordinance a couple of years ago and what is being changed is that you are not allowed to park off of a paved or improved surface but there is a 72 hour exemption allowed for this type of situation.

Mr. Leonard asked Mr. McGrath about the regulations for gravel driveways. Mr. McGrath stated that after July of 2005 you can no long construct a driveway in the front yard out of gravel, it must be pavers, asphalt or concrete.

Mrs. Howard asked about wind energy on page 2 subsection C (1) the wording looks like it allows for a 35 ft tower in addition to the height of the structure. Mr. McGrath stated that he would review the wording. Mr. Petrak stated on that same page section (A) Lot size requirement says "The development of wind energy conversion systems" which sounds like Research and Development and he stated that it should say construction or sighting of. Mr. Jarvis stated that

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under (A) Lot size requirements it says lots one acre in size or greater and C (1) says less than one acre. Mr. Petrak stated on (D) it should say "90 feet from the top of the WECS structure" and (E) should read "equal to the maximum tower height of the system." And (F) should include "Within all residential districts, because of electronic wave interference, the blades..."

Mr. Petrak stated on page 3 A (3) it should say heating/cooling instead of water lines because it could be some other liquid. Vice Mayor Giambone stated also in B (3) should also be changed.

Mr. Jarvis questioned pg 4 D (3) and asked how high that could be to screen the mounted panels.

Mr. Petrak questioned C (2) on that page and thought it should say "to allow light transmission or heat absorption".

Mr. Jarvis stated pg 14 158.111 (A) should read " Non-Occupied appurtenances".

Mr. Petrak stated that on page 17 158.114 (A) halfway down the paragraph that the off-street parking should be for the economic viability of both residential and business.

Mayor Vann stated that the Public Hearing would be continued to the next meeting since there was no further input tonight.

#### ORDINANCE, RESOLUTIONS AND PUDS

Ordinance 09-5 PUD 98-9 Amend 3/09 College Park South (Third Reading)

Clerk Bucheit read this Ordinance adopts a recommendation to amend Ordinance #99-4, 02-21 and 07-56 (MX-PUD 98-9) by changing the zoning and concept plan for 9.3925 acres located on the east side of Hibiscus Way and north of Park Overlook Drive from medium density residential to permit office uses. This is not an emergency ordinance and will become effective 30 days after passage.

Mrs. Howard MOVED to approve Ordinance 09-5 seconded by Mr. Hadley and approved by unanimous voice vote.

Motion – PUD 98-9 SSP #10 College Park South

Mr. Hadley MOVED to approve PUD98-9 SSP#10 College Park South

"I move, for the purpose of taking administrative action, approval of a PUD Specific Site Plan for College Park South, PUD 98-9, SSP #10, on the basis that City Council finds the facts submitted with the application and accompanying materials, and modifications, amendments and supplementary conditions satisfy the standards and criteria for PUD Specific Site Plan approval as per §158.066 of the Zoning Code. Supplementary conditions required of this approval shall be as follows. I further move that this motion with all conditions be fully recorded in the minutes of this Council meeting."

- 1 The approved site and landscape plans shall be the plans dated "Received May 20, 2009" except as modified herein.
- 2 The approved elevations for the 32,000 square foot building located at the northwest corner of this development shall be the architectural drawing and the associated color renderings dated "Received April 28, 2009."
- 3 The 3-story building and the proposed 10,000 square foot addition to that building, the future 2-story 34,000 square foot building and the

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proposed two-story building and proposed 15,000 square addition to the shall be designed to be compatible with the approved elevations referenced in Condition #2 of this approval as determined by the Planning Department prior to the issuance of a permit for construction. Should the applicant and the staff not agree on the compatibility of the design, the building shall be brought forward to Planning Commission for a decision.

- 4 All buildings within this development shall be designed so there is no apparent rear to any building. Architectural materials and designs shall be incorporated on all sides of all the buildings.
- 5 All building mechanical equipment is to be screened from all directions with architectural features (roof forms or parapet walls) on each building. Metal screening will not be accepted. Pad mounted equipment must be screened with landscaping and/or masonry walls and shall not be visible to the public.
- 6 A PUD Agreement must be signed by the owner and a bond or letter of credit for the site landscaping must be submitted prior to issuance of a zoning permit for any portion of the project for the purpose, but not for the sole purpose, of insuring the installation of landscaping. Said bond or letter of credit must meet the requirements of the City's landscaping and screening regulations.
- 7 Perpetual maintenance of landscaping shall be provided and any dead or diseased materials shall be removed and replaced with similar types, species and sizes, as originally planted, within three months, weather permitting.
- 8 All trash collection containers shall be enclosed within a building or screened from view and enclosed within a permanent dumpster enclosure. All dumpster enclosures shall be constructed with materials to match the building. The final locations of the dumpsters shall be reviewed and approved by the Planning and Zoning Department prior to the issuance of a zoning permit.
- 9 Debris and trash shall be routinely collected by the owner from the parking lot and grounds of all areas of the project including the storm drainage facilities. The City reserves the right to require more frequent collection as necessary.
- 10 All concerns of the City Engineer, Fire Department, Sanitary Engineer and the Planning Department shall be addressed and approved prior to the release of a zoning permit.
- 11 No portion of any building may be occupied for the first time or reoccupied later until and unless an application for a Certificate of Zoning Compliance has been submitted to the City by the property owner or by the prospective occupant. No such occupancy may occur until the application for a Certificate of Zoning Compliance has been approved and issued by the City.
- 12 All man-doors and service doors shall be painted to match the color of the building as to blend in with the proposed facade.
- 13 Prior to issuance of any zoning permits for this project, the applicant shall submit a subdivision record plan for City approval.

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- 14 Prior to the release of the record plan for recording, the applicant shall sign a Subdivider's Contract and submit a bond or letter of credit for the public improvements if required by the City Engineer.
- 15 There shall be decorative streetlights installed along the east side of Hibiscus Way and on the north side of Park Overlook Drive. The streetlights shall be a continuation of the design currently being used within College Park at Willow Creek. The light fixtures shall be bonded as part of the Subdivider's Contract, if a Subdivider's Contract is not required by the City Engineer, the lights shall be bonded with the required PUD Agreement.
- 16 The proposed light fixtures within the development shall be reviewed and approved by the Planning Department prior to the release of a zoning permit for the buildings. The fixtures shall be consistent with the fixtures used throughout the rest of the College Park development.
- 17 A special lighting assessment district for operational costs and not for installation of fixtures may be created and approved by the City Engineer. The installation of the streetlights is the responsibility of the applicant and not the City.
- 18 Final drainage calculations shall be approved by the City Engineer prior to the release of the record plat for recording.
- 19 Wall signage is permitted on the north, west and south elevations of the future three-story building and the proposed two-story building located on the northwest corner of the development. The applicant will be permitted wall signage on all four elevations for the future two-story office building located at the southwest corner of the project. The total wall signage area for each elevation approved for wall signage shall not exceed 100 square feet and there shall not be more than two wall signs on a single elevation.
- 20 The ground signs located at the entrance to the development shall be reviewed and approved by the Planning Department prior to the release of any zoning permit for the signs.
- 21 Fountains and/or other aeration and water circulation devices are required for the retention pond and shall be maintained by the owner, developer, or the condo association in perpetuity.
- 22 Downspouts shall be internally mounted and shall not be visible on the exterior of the building.
- 23 Construction hours shall be limited to 7am-7pm Monday through Saturday.
- 24 Approval of this application by City Council shall nullify and void the approval of PUD 98-9 SSP #8 Carriage Homes at Willow Creek Phase III approved by City Council on May 27, 2008.
- 25 The approval of this request is contingent upon the associated PUD Amendment, PUD Amendment 98-9 3/09 Ordinance # 09-5, being approved and becoming effective.

Seconded by Mrs. Howard it was approved by unanimous voice vote.

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Ordinance 09-7 For the submission to the Electorate of an amendment to Article IV Section 4.04 (Second Reading)

Clerk Bucheit read this Ordinance provides for the submission to the Electorate of an Amendment to Article IV, The Council, Section 4.04 Officers of the Council, Amending Section 4.04 of the Charter of the City of Beavercreek, Ohio, and to place the same on the ballot at the general election, November 3, 2009.

Public Hearing

Mr. David Wilkinson stated that he was concerned about hearings being spontaneous and objected to the fact that a public hearing is offered at the first reading and not advertised and not authorized by the City Charter.

Mr. McHugh stated that this ordinance was introduced at the last meeting which was the first reading, this is the second reading for public comment and Council will consider it at the third reading. This is the process by which we introduce and adopt all ordinances. Mr. McHugh stated that there is no prohibition against a Mayor accepting public input at the first reading.

Mr. Wilkinson had a problem with the second Whereas, "Whereas, Council having reviewed said report and recommendations has determined that an amendment to Article IV, The Council, Section 4.04, Officers of the Council, should be submitted to the electors of the City:" He stated that it is a judicial act that was done before the ordinance was introduced. Mr. McHugh stated that the process was that the Charter Review Commission submitted a report with recommendations which was presented with some detail to Council at a work session. This was one of the recommendations that Council considered and decided it was appropriate to request legislation to present it to the public for a vote.

Mr. Wilkinson stated that the City Charter says the enabling clause is "The City of Beavercreek hereby ordains" and you have added "by two thirds of all members of Council concurring". Mr. McHugh stated that in this case two thirds is required because it needs to be a super majority.

Mayor Vann thought that the appointment issue had been corrected with the new ordinance on appointments to outside boards and did not think it needed to be covered in the Charter.

Vice Mayor Giambrone MOVED to remove appointments from section 4.04 (A), seconded by Mr. Hadley it was approved by unanimous voice vote.

There was no public input so the Public Hearing was closed.

This Ordinance moves automatically to the Third Reading.

Ordinance 09-8 For the submission to the Electorate of an amendment to Article X Section 10.04 (Second Reading)

Clerk Bucheit read this Ordinance provides for the submission to the Electorate of an Amendment to Article X, Finance, Taxation and Debt, Section 10.04 Transfer of Appropriations Amending Section 10.04 of the Charter of the City of Beavercreek, Ohio, and to place the same on the ballot at the general election, November 3, 2009.

There being no public input the Public Hearing was closed.

Mr. Leonard wanted to know why this section says "and upon written request by the City Manager, the Council shall ", he thought it should say may.

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After discussion Vice Mayor Giambrone MOVED to add “shall consider by ordinance”, seconded by Mrs. Howard it was approved by unanimous voice vote.

This Ordinance moves automatically to the Third Reading.

Ordinance 09-9 For the submission to the Electorate of an amendment to Article X Section 10.10 (Second Reading)

Clerk Bucheit read this Ordinance provides for the submission to the Electorate of an Amendment to Article X, Finance, Taxation and Debt, Section 10.10 Annual Appropriations Ordinance, Amending Section 10.10 of the Charter of the City of Beavercreek, Ohio, and to place the same on the ballot at the general election, November 3, 2009.

There being no public input the Public Hearing was closed.

This Ordinance moves automatically to the Third Reading.

Resolution 09-21 Appropriation of property for widening of Indian Ripple Road (Gary Daniels 4193 Indian Ripple Road)

Clerk Bucheit read a Resolution to declare the necessity and intent to acquire certain parcels or real estate and other property interests owned by Gary Daniels, with interest by others, for the Indian Ripple Road Widening Project, in the City of Beavercreek, Ohio.

Mr. Beach stated that there are five resolutions and ordinances concerning five separate parcels for the upcoming project on Indian Ripple Road between Darst and I675, to turn it into a five lane highway with sidewalks and a bike path and upgraded traffic signals. This is a 2.5 million dollar project that is funded by grants, two Federal Grants and an Issue Two Grant which could be bid by August of this year. There were twenty seven parcels in this stretch to be acquired; twenty two were successfully acquired by Mr. Moorman and the agent at the amounts offered. There have been no counter offers by the other parcel owners, some are out of town owners and there are some buffering issues, and others have not answered.

The first two parcels are owned by Gary Daniels which relates to Resolution 09-21 and Ordinance 09-10 which is for .024 acres of permanent right-of-way and .17 of temporary acres of right-of-way where the grade is being adjusted and will return back to the owner.

Mr. Jarvis wanted to clarify that it was not a money factor but that there were other issues involved. Mr. Beach stated that was the indication that he received from them, but certainly many think they may get more in court. Some want to settle in court because of the tax implications, the payment could be a capital gains whereas a court settlement would be treated differently.

Mr. Hadley MOVED to approve Resolution 09-21 seconded by Mr. Leonard and approved by majority voice vote (Howard opposed).

Resolution 09-22 Appropriation of property for widening of Indian Ripple Road Improvement (Gary Daniels 3992 Indian Ripple Road)

Clerk Bucheit read a Resolution to declare the necessity and intent to acquire certain parcels or real estate and other property interests owned by Gary Daniels, with interest by others, for the Indian Ripple Road Widening Project, in the City of Beavercreek, Ohio.

Mr. Beach stated this second parcel is at the corner of Darst and Indian Ripple and involves Resolution 09-22 and Ordinance 09-11 and includes .05 acres of

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permanent and .07 of temporary right-of-way.

Mr. Petrak MOVED to approve Resolution 09-22 seconded by Mr. Hadley and approved by majority voice vote (Howard opposed).

Resolution 09-23 Appropriation of property for widening of Indian Ripple Road Improvement (Patricia Sturgill)

Clerk Bucheit read a Resolution to declare the necessity and intent to acquire certain parcels or real estate and other property interests owned by Patricia Ann Sturgill, with interest by others, for the Indian Ripple Road Widening Project, in the City of Beavercreek, Ohio.

Mr. Beach stated this is a temporary only easement to grade yard and driveway to make it drain into the street and is a small dollar amount.

Mrs. Howard wanted to know why Ms. Sturgill had not settled. Mr. Beach stated the agent had tried at all times of the day and night to contact her and stated that she was a business woman that was well aware of the appropriation process and has attorneys representing her and was not interested in settling right now.

Mr. Jarvis MOVED to approve Resolution 09-23 seconded by Mr. Leonard and approved by unanimous voice vote.

Resolution 09-24 Appropriation of property for widening of Indian Ripple Road Improvement (Beaver Creek Elderly, Inc)

Clerk Bucheit read a Resolution to declare the necessity and intent to acquire certain parcels or real estate and other property interests owned by Beaver Creek Elderly, with interest by others, for the Indian Ripple Road Widening Project, in the City of Beavercreek, Ohio.

Mr. Beach stated that this parcel is located at Indian Ripple and Woodcroft and is the Beaver Creek Elderly apartments which have multiple owners who have been very inaccessible. In order to build the project on a timely basis and get the best bids we need to move forward with these five appropriations.

Mrs. Howard wanted to know the situation with this site. Mr. Beach stated that there were multiple owners and one owner is based in the Columbus area and has not answered or cooperated in the process.

Mr. Leonard wondered if we could get a default judgment with the evidence the agent has collected if they decide not to go to court. Mr. McHugh stated that we would be required to submit evidence and that the case would be tried by a jury. The citizens decide the value of the other citizen's property not the judge.

Vice Mayor Giambrone MOVED to approve Resolution 09-24 seconded by Mr. Leonard and approved by unanimous voice vote.

Resolution 09-25 Appropriation of property for widening of Indian Ripple Road Improvement (Archer, Messina & Hund)

Clerk Bucheit read a Resolution to declare the necessity and intent to acquire certain parcels or real estate and other property interests owned by John T. Archer, Michael J. Messina, and Jim Hund, with interest by others, for the Indian Ripple Road Widening Project, in the City of Beavercreek, Ohio.

Mr. Beach stated this last parcel is the day care center at the corner of Apple Blossom and Indian Ripple Road and is also multiple owners and requires only 41 square feet of permanent right-of-way and the remainder is temporary

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easement. He stated that they are trying to save as many trees as possible in that area.

Vice Mayor Giambone MOVED to approve Resolution 09-25 seconded by Mr. Hadley and approved by unanimous voice vote.

Ordinance 09-10 To Appropriate certain real property interests for Indian Ripple Road Imp. (Gary Daniels 4193 Indian Ripple Road) First Reading

Clerk Bucheit read this Ordinance appropriates certain real property, parcels of real property interests owned by Gary Daniels with interest by others, for the Indian Ripple Road Widening Project in the City of Beaver creek, Ohio.

Mayor Vann asked Mr. McHugh to explain the difference between the resolutions and ordinances. Mr. McHugh stated the resolutions are Resolution of Necessity for which Council needs to decide if the project needs to be done and the property is needed for the project. The ordinances are for appropriation which requires the deposit of money with the court that was offered for each parcel. Because they are roadway projects, the law allows for a quick take when the complaint is filed so the roadway project can then proceed. The City would then continue negotiations and if they could not settle it would go to Court, which does not generally happen.

Mr. Hadley MOVED to approve Ordinance 09-10 and move it to second and third reading seconded by Mr. Jarvis and approved by majority voice vote (Howard opposed).

Ordinance 09-11 To Appropriate certain real property interests for Indian Ripple Road Imp. (Gary Daniels 3992 Indian Ripple Road) First Reading

Clerk Bucheit read this Ordinance appropriates certain real property, parcels of real property interests owned by Gary Daniels with interest by others, for the Indian Ripple Road Widening Project in the City of Beaver creek, Ohio.

Mr. Petrak MOVED to approve Ordinance 09-11 and move it to second and third reading, seconded by Mr. Leonard and approved by majority voice vote (Howard opposed).

Ordinance 09-12 To Appropriate certain real property interests for Indian Ripple Road Imp. (Patricia Sturgill) First Reading

Clerk Bucheit read this Ordinance appropriates certain real property, parcels of real property interests owned by Patricia Ann Sturgil with interest by others, for the Indian Ripple Road Widening Project in the City of Beaver creek, Ohio.

Mr. Jarvis MOVED to approve Ordinance 09-12 and move it to second and third reading. Seconded by Mr. Hadley and approved by unanimous voice vote.

Ordinance 09-13 To Appropriate certain real property interests for Indian Ripple Road Imp. (Beaver Creek Elderly, Inc.) First Reading

Clerk Bucheit read this Ordinance appropriates certain real property, parcels of real property interests owned by Beaver Creek Elderly, Inc. with interest by others, for the Indian Ripple Road Widening Project in the City of Beaver creek, Ohio.

Vice Mayor Giambone MOVED to approve Ordinance 09-13 and move it to second and third reading. Seconded by Mr. Jarvis and approved by unanimous voice vote.

Ordinance 09-14 To Appropriate certain real property interests for Indian Ripple Road Imp. (John T. Archer, Michael J. Messina and Jim Hund) First Reading

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Clerk Bucheit read this Ordinance appropriates certain real property, parcels of real property interests owned by John T. Archer, Michael J. Messina and Jim Hund with interest by others, for the Indian Ripple Road Widening Project in the City of Beavercreek, Ohio.

Vice Mayor Giambrone MOVED to approve Ordinance 09-14 and move it to second and third reading, seconded by Mr. Leonard and approved by unanimous voice vote.

Resolution 09-26 To Authorize Temporary Modification of Sign Code for Dayton-Xenia/Grange Hall Road Construction

Clerk Bucheit read a Resolution to authorize the City Manager to modify the Temporary and Portable Sign Code Provisions for properties located in the construction area of Dayton-Xenia/Grange Hall Road and during the construction period of this same project.

Vice Mayor Giambrone stated that this resolution is a result of the City Manager and Engineer working with the business leaders on Dayton-Xenia Road to help reduce the impact of construction.

Mr. Petrak stated that Mr. Beach remembered that something similar was done during the Fairfield Rd and I675 road construction and thought it would be appropriate.

Mr. Petrak MOVED to approve Resolution 09-26 seconded by Mr. Hadley and approved by unanimous voice vote.

Resolution 09-12 Approval of the CWA Contract

Clerk Bucheit read a Resolution authorizing the City Manager to execute a Collective Bargaining Agreement with the Communication Workers of America #4322

Mr. Kucera stated that this is a tentative agreement between the City and the Communication Workers of America #4322. He said the City has had to make some important decisions about wages and health care during these difficult economic times. This is a three year agreement retroactive to January 1, 2009 and is unique to Beavercreek because there is an agreement to reopen annually for wages and health care only all other provisions will remain the same.

Mr. Cornell thanked the bargaining team for the union and management which was made up of Bill Kucera, Dave Beach and Mike Thonnerieux. They represented the City well with a clear understanding of the Council-Management Strategy and conveyed it well to CWA. Mayor Vann thanked the CWA for their part in this contract.

Mr. Jarvis MOVED to approve Resolution 09-12 seconded by Mrs. Howard and approved by unanimous voice vote.

#### CITY MANAGER'S REPORT

Mr. Cornell stated that the Church of the Nazarene has volunteered to help clean up the City parks from June through August and have a schedule to work at many of our larger parks in the City.

Mr. Thonnerieux thanked the Church of the Nazarene as well as J. C. Sloan and stated that this is the largest sustained parks service project in our history. The amount of work that they are about to undertake helps us to maintain the parks to the level we have outlined in our goals and objectives and saves a lot of money for the City. It will also allow the City to maintain the parks more efficiently and

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effectively in the future. This is a service project for the church that they did not even want acknowledgment for and they are donating the materials as well as the time and have printed t-shirts for everyone that says "We Love Beavercreek".

Mayor Vann stated that this all came about from an e-mail from Emily Reeves about four months ago, she had participated in a meeting with the Youth Council and some local churches youth leaders here at the City. With the economy the way it is, there are few if any jobs for teens this summer and the church wanted to keep the teens active, participating and giving back to the community.

Mr. Cornell stated he had participated in the Annual Volunteer Recognition last Thursday with 110 of 160 active volunteers that help out at the Senior Center. The volunteers worked a total of 21,927.5 hours in 2008 which would equal ten paid City workers. They work at the front desk, in the fitness room, kitchen, library, newsletter mailing, transportation, special events and in the music group known as the Strummers.

Mr. Thonnerieux stated that the senior volunteers are the heartbeat of the center and stated that we could not come close to accomplishing all the activities and events without them. He thanked them for all their time and energy.

Mr. Leonard stated that the Strummers meet weekly in the Community Theatre section of the center for practice and would probably welcome an audience.

#### MAYOR'S REPORT

Mayor Vann stated that there was a very nice ceremony at the Veterans Memorial in Beavercreek yesterday for Memorial Day honoring the WWII Veterans. Marc Marderosian is still in charge of the event, he was selected to be in the Honor Guard that went to Washington last fall.

Mayor Vann asked Council to approve having Judge Hutchison from Juvenile Court to appear as a speaker to talk about the relationship between Beavercreek and juvenile issues in the court system.

Mayor Vann stated that the Mayor of Jamestown approached her several times to set up a meeting with all the Mayors and Councils in Greene County to have discussions about best practices, common issues, partnerships etc. She volunteered the City to host the event and to have the dinner meeting and social event at the Golf Course. Mayor of Jamestown has volunteered to draft the agenda which we could then agree to or amend and wanted to know if the Clerk could help with some of those arrangements.

Vice Mayor Giambone thought that was something that should be handled by the Mayors and Managers Association or some subset, she did not want to usurp a structure that was already in place.

Mr. Cornell stated that years back the County Administrator used to call regular meetings for managers and mayors of the larger cities. He stated it had not happened in a while and it would make sense because of the growth and political dynamics. Mr. Cornell thought that Howard Poston should be asked to call a meeting because it should be the central authority doing so.

Mr. Hadley stated that they had a speaker from the Honor Flight at the Veterans Memorial on Memorial Day to honor those that served. He spoke about the Honor Flight and stated that they had transported over 20,000 WWII Veterans to the Veterans Memorial in Washington D.C. since May of last year free of charge. He said that we were losing our WWII Veterans at a rate of between a hundred

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and a hundred and fifty a day; the greatest generation in the world. Mr. Hadley stated that he has heard Earl Morris speak before and it just makes you tear up.

Mayor Vann stated that Doug Lloyd, one of the City employees sang and that he has a wonderful voice.

Mr. Cornell stated in response to Council's request on May 11<sup>th</sup> to see what Mr. Schultze of Greene CATS was requesting of Council time and that it was made clear that Council was looking for any new information or concerns or opportunity related to Greene CATS. This was relayed to Mr. Schultze on May 12<sup>th</sup> and we are still waiting to hear from him.

Mr. Leonard wanted to know if anyone had any additional information on the petition that they had received. Mr. McHugh stated that the City is in litigation with one of the signers with respect to that situation, about some trees blocking the right-of-way and line of sight. Mr. Leonard stated that what they are asking to do is clearly not possible to do, a 100 yard buffer between commercial property servicing drive in customers and residential property. He stated that some of the things they are asking for should be dealt with by the current ordinances and wondered if staff had looked into it. Mr. Burkett stated that he and the Planning Director had a discussion about this and in the fourth section of the new Zoning Code there is a table of permitted uses they had added drive-thru convenient stores as a conditional use in B2, B3 and B4 and they would have to go before Planning Commission before they are approved. They can then add additional conditions such as maintenance of the property and pick up of debris.

Mr. McHugh stated that he had spoke to his attorney and offered to sit down to see what could be done about some of these problems.

Mrs. Howard stated that Mr. Austria had toured the region today and asked the Greene County Officials to come out to listen to him speak about what is happening at the national level. He gave them an update on a bill called "Cap and Trade" which he is against and what influence it might have on small business and households. He also spoke about Wright Patterson, Springfield International Guard, and what is happening with the stimulus program. She also said that this is about the time that students apply for the Military Academy and they need a signed letter of support from their local representative and stated that Steve Austria will sign those letters for you.

Mrs. Howard congratulated the U13 Celtic Soccer team; they won the championship in the Warrior Classic. She said the Creek Classic would be coming up this weekend and stated that the Yellow Brick Road had really helped the traffic problems.

Mrs. Howard stated that Heroes welcoming Heroes will take place on July 9<sup>th</sup> at the National Air Force Museum to welcome those returning from deployment and it is a time to thank them for their service to our country. She thanked all the Veterans that have served our country.

Vice Mayor Vann congratulated all the graduates from Beavercreek High School, Carroll High School, Fairmont High School, Wright State University and the University of Dayton as well as all of those who live in Beavercreek and graduated.

Vice Mayor Giambone thank Chief Turner for meeting with the residents at Hunters Ridge to come up with a solution to the parking problems for their neighborhood on the 4<sup>th</sup> of July.

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Mr. Petrak stated that at the Business Meeting for Dayton-Xenia Road Construction Mr. Beach had spoken about the U.S. 35 reconstruction project that redesigns the Smithville and Woodman Road interchanges and potentially removes the Linden Avenue exit and Dayton-Xenia entrance. He said Mr. Beach had spoke to ODOT and told them that we need those entrance-exit ramps or something to replace them. Mayor Vann commented that everyone needs to voice their opinion to ODOT also. Mr. Petrak stated that he thought that ultimately Council would have to write a resolution demanding that we have access to Dayton-Xenia and that everyone needs to speak out at the public meeting.

Mr. Jarvis stated that he had received a call from Mrs. Hembree speaking about water run off issues. Mayor Vann thought that should be a work session topic about a water retention issue. Mr. Leonard stated that he had spoken to her and so had Mr. Petrak.

Vice Mayor Giambrone MOVED to adjourn the meeting at 9:42 p.m. seconded by Mr. Jarvis, the motion PASSED by unanimous voice vote.

\_\_\_\_\_  
Mayor Vann

ATTEST:

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Clerk

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