

BEAVERCREEK CITY COUNCIL
REGULAR MEETING June 22, 2009 6:00 p.m.

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

ABSENT: Mr. Jarvis, Mr. Petrak

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

Mayor Vann led the pledge and a moment of silence.

Mrs. Howard MOVED to excuse Mr. Jarvis, Mr. Petrak and Mr. Leonard,
seconded by Vice Mayor Giambrone it was approved by unanimous voice vote.

Mr. Hadley MOVED to approve the amended agenda; it was seconded by Vice
Mayor Giambrone. The Motion PASSED by unanimous voice vote.

Mrs. Howard MOVED to approve the minutes for June 8, 2009, seconded by Mr.
Hadley the Motion PASSED by unanimous voice vote.

Mr. Hadley MOVED to approve the minutes for May 18, 2009, seconded by Mrs.
Howard the Motion PASSED by unanimous voice vote.

Mr. Leonard arrived 6:10 p.m.

PUBLIC HEARING Ordinance 09-21 (Continued)-Zoning Code (First Reading)
Clerk Bucheit read an Ordinance repealing existing Chapter 158, Zoning Code,
and Adopting new Chapter 158, Zoning Code, of the Beavercreek Code of
Ordinances.

Mr. McGrath stated this is a continuation of the First Reading of the Zoning Code
that was presented in four sections for Public Hearings; this is the entire code
which includes changes from Council, Planning Commission and the public and
is dated June 18, 2009. There is one additional change that was brought to his
attention that should be added to definitions "Taxi Cab and Shuttle Services" and
where they would be allowed which he will change at the second reading.

Public Hearing

Mike Coalson of 3093 Blue Green Drive stated that he had spoke to many of the
Council members over the years about the short comings of the Zoning Code
and enforcement and has substantially reviewed the ordinance and changes to it.
He stated that staff had done a great job addressing a number of recurring issues
that have occurred over the years which he had at times expressed his opinions
and he supports the changes whole heartedly.

David Wilkinson of 1489 Lemke Rd spoke about City Council public hearing and
notice on page 117. "The City, at its discretion and in lieu of mailed notice, may
provide notice by other alternative means such as hand delivery of written
notice", he stated that it goes on to talk about other types of notices. He did not
think it was authorized because a portion of the Ohio Revised Code §121.22
says "Every public body by rule shall establish a reasonable method whereby
any person may determine the time and place of all regularly scheduled meetings
and the time and place and purpose of all special meetings." He stated that it is
an unauthorized declaration of public power; he said that it should be a rule
stating which method will be used.

Mr. Wilkinson also wanted to comment on page 118 the statement "The failure to
deliver the notice as provided in this section shall not invalidate the public

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hearing or any decision on the application.” He said ORC 121.22 (H) states “...a resolution, rule or formal action adopted in an open meeting is invalid if the public body that adopted the resolution, rule or formal action violated division F of this section.” He stated that section F is what he read about establishing a reasonable method and he stated that they have not established a reasonable method by rule.

Mr. Hadley had several changes he wanted made starting with page 158 section (3) “shall” which is the fourth word from the end should be removed. He stated that on page 220 section (3) the last sentence “of the dwelling” should be removed. Page 221 section (7) should read “A home occupation shall not create a hazard...”. Page 268 (3) Mr. Hadley would like to change the wording from “so long as” to “provided”. Page 311 (2) second line should read “the property on which the violation” and the last line in the paragraph should read “action to be taken, and the timeframe within which”. It should also be changed in (2) “the timeframe within which to complete such action.”

Mr. Leonard commented on the section that Mr. Wilkinson brought up and stated that there is a sentence that seems to contradict our regulations; “The failure to deliver the notice as provided in this section shall not invalidate the public hearing or any decision on the application.” He asked what if everyone within 500 feet had not gotten a notice. Mr. McGrath stated that some language was left out of this paragraph, that when this was discussed that everyone within 500 feet of the boundaries of a PUD amendment or specific site plan will receive a mailed notification, outside of the 500 foot boundary the City reserves the right to notify people by other means. This statement protects the City and the applicant against an undue slow down of the process by someone claiming not to have received a notification, Council could hold up the process if they believe that proper notice was not given. Several of the Council members wanted Mr. McHugh to look at this section to be sure of the wording.

Mayor Vann stated that on pg 45 there was a change to Vehicle Dealership but the second sentence still says automobile. She also wondered if it should somewhere state that it should be in enclosed facilities.

Mrs. Howard MOVED to approve Ordinance 09-21 and send it to the second and third reading, seconded by Mr. Hadley it was approved by unanimous voice vote.

ORDINANCE, RESOLUTIONS AND PUDS

Ordinance 09-10 To Appropriate certain real property interests for Indian Ripple Road Imp. (Gary Daniels 4193 Indian Ripple Road) Third 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 Beavercreek, Ohio.

Mr. Moorman stated that they have tentatively settled three of the five properties but they have not yet been signed and he would like Council to approve all five ordinances.

Mr. Hadley MOVED to approve Ordinance 09-10, seconded by Mrs. Howard it was approved by unanimous voice vote.

Ordinance 09-11 To Appropriate certain real property interests for Indian Ripple Road Imp. (Gary Daniels 3992 Indian Ripple Road) Third 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 Beavercreek, Ohio.

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Mr. Hadley MOVED to approve Ordinance 09-11, seconded by Mr. Leonard it was approved by unanimous voice vote.

Ordinance 09-12 To Appropriate certain real property interests for Indian Ripple Road Imp. (Patricia Sturgill) Third 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 Beavercreek, Ohio.

Mrs. Howard MOVED to approve Ordinance 09-12, seconded by Mr. Leonard it was approved by unanimous voice vote.

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

Vice Mayor Giambrone MOVED to approve Ordinance 09-13, seconded by Mr. Hadley it was 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) Third Reading
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, seconded by Mrs. Howard it was approved by unanimous voice vote.

Ordinance 09-15 Levying Special Assessments for Construction and Installation of Street Improvements for the Mission Point Project (Second Reading)
Clerk Bucheit read an Ordinance levying Special Assessments for the purpose of Constructing and Installing certain Street and Improvements in the City (Mission Point Project).

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

This Ordinance moves automatically to the Third Reading.

Ordinance 09-17 Levying Special Assessments for Construction and Installation of Street Improvements for the Ballymeade Project (Second Reading)
Clerk Bucheit read an Ordinance Levying Special Assessments for the purpose of Constructing and Installing certain Street and Improvements in the City (Ballymeade Project)

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

This Ordinance moves automatically to the Third Reading.

Ordinance 09-16 Issuance of Bonds Not To Exceed \$900,000 for the Mission Point Blvd Road Construction (Second Reading).
Clerk Bucheit read an Ordinance providing for the issuance of not to exceed \$900,000 of bonds by the City of Beavercreek, Ohio, for the purposes of paying the costs of Constructing and Installing of Street Improvements to Mission Point Boulevard in the City of Beavercreek.

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Vice Mayor Giambrone MOVED to Amend Ordinance 09-16, 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 09-18 Issuance of Bonds Not To Exceed \$220,000 for Ballymeade Road Construction (Second Reading)

Clerk Bucheit read an Ordinance providing for the Issuance of Not to Exceed \$210,000 of Bonds by the City of Beavercreek, Ohio, for the purpose of paying the costs of Constructing and Installing of Street Improvements to Shakertown Road and North Fairfield Road in the City of Beavercreek.

Mr. Hadley MOVED to Amend Ordinance 09-18 to \$220,000 seconded by Mrs. Howard 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 09-19 Issuance of Bonds by Consolidation Not To Exceed \$1,120,000 for the Mission Point Blvd Project and the Ballymeade Project (Second Reading)

Clerk Bucheit read an Ordinance providing for the Issuance, by consolidating two separate bond issues, of not in excess of \$1,120,000 of bonds of the City of Beavercreek, Ohio, for the purposes of paying the costs of Constructing and Installing of Street Improvements to Shakertown Road and North Fairfield Road for the Ballymeade Project in the City; and paying the costs of Constructing and Installing Street Improvements to Mission Point Boulevard in the City.

Mr. Hadley MOVED to AMEND Ordinance 09-19 to \$1,120,000, seconded by Mr. Leonard 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 09-20 Issuance of Not to Exceed \$405,000 of Various Purpose Assessment BAN Series 2008, First (2009) Renewal (Second Reading)

Clerk Bucheit read an Ordinance providing for the issuance of not to exceed \$405,000 Various Purpose Special Assessment Bond Anticipation Notes, Series 2008, First (2009) Renewal by the City of Beavercreek, Ohio in anticipation of the issuance of bonds.

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

This Ordinance moves automatically to the Third Reading.

CITY MANAGER'S REPORT

Mr. Cornell acknowledged that a couple department heads were out and that they were being represented by their assistants Rita Yancey and Jeff Moorman and that they were doing a terrific job.

Mr. Cornell stated that ODOT is working on the U.S. 35 Widening Project that will reconfigure the Smithville and Woodman entrances and exits onto U.S. 35 and remove the Linden Avenue exit and the Dayton-Xenia entrance has progressed through the preliminary engineering phase and will be catastrophic for Beavercreek. No date has yet been set for the public hearing but once it is set it

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will be posted on the website and there are also mandated advertising in the newspaper.

Mrs. Howard stated that Mr. Beach is going to public meetings to inform all the citizens about this project so that everyone can make their voices heard. She stated that it could be a real problem if there is a bad accident or if NIMS had to be instituted causing a huge safety issues.

Vice Mayor Giambrone stated that she thought everyone could start writing now to ODOT and our state representatives Jarrod Martin and Chris Widener to let them know it is not acceptable and let them know about our deep concern.

Mr. Leonard stated that we need to get the community behind this action and not let it happen.

Mr. Hadley stated that this goes back to 1983 when I675 was opened and they were building the bridge over I675 which is Dayton Xenia, they discussed whether it should be two lanes or four lanes and the City encouraged them to build four lanes. ODOT agreed to build four lanes on the premise that the City would widen Dayton-Xenia to four lanes in the future, now that we are widening Dayton Xenia District 7 wants to close the ramps to U.S. 35, he thought ODOT District 7 and 8 should get together and discuss this issue. He said that it will be a real problem for Carroll High School with all the additional traffic that will have to pass there. If there was an emergency situation to get to a Miami Valley Hospital and they have to back track to Fairfield that could be a real problem.

Mr. Cornell thanked the Chamber for their involvement with this initiative; they have taken a front line position.

Mr. Cornell stated that there would be a Fourth of July Parade at 6:00 p.m. and celebration a week from Saturday and that he and Mr. Hadley have arranged for a new Rotary Float to be in the parade. There will be activities following the parade at Rotary Park and fireworks at 10:00 p.m. unless there is rain and they will be on the 5th of July instead.

Mr. Cornell stated that the Party on the Patio at the Golf Course will be happening again this Thursday and throughout the months of June and July; there is fantastic entertainment with bands performing.

Mr. Cornell stated that the Parks and Recreation Department has started a new tradition with Movies in the Park, at Lofino Park, on Friday June 26, July 31 and August 28. The movies will start at dark and there are concessions available.

Mr. Cornell stated that the Church of the Nazarene has a volunteer group that will be cleaning up the Beaver Creek Parks during the summer and they started this past week at C.I. Beaver Park with 175 volunteers. They are very organized and effective and the City appreciates all their efforts.

MAYOR'S REPORT

Mayor Vann stated that Mike Frazier had done an interview tape about electricity and the issues for providing energy that will air on Channel 5.

Mr. Leonard sent Council an e-mail about the printer at the Senior Center being used by the members and the costs of paper and printer cartridges and staff time. He suggested that Council pass a policy to allow the seniors to bring in their own printers and hook them up. Vice Mayor Giambrone stated that this was an operational issue and she did not want to create additional problems for the staff. Mrs. Howard stated that they had all received an e-mail from Lee Duteil

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today and he said that Mike Thonnerieux was moving the printer to the reception desk to control it better and to give Mike a chance to get back from vacation to decide what to do.

Mr. Leonard MOVED to have staff look into the printer situation and as one of the options possibly allow seniors to bring in their own printers to the Senior Center, seconded by Mrs. Howard it was approved by majority voice vote (Giambrone against).

Mrs. Howard stated that the Tattoo Celebration is at Wright Patterson Air Force Base this Friday and the City is proud to be a sponsor. It is open to the general public and is a free event and Aaron Tippin will be the big Country singer at the event, there will also be fly bys, food, drinks and fireworks.

UNSCHEDULED SPEAKERS

Frank Feчек of 4308 Kemp Road asked the Council for help. Frank's Fruit Farm is on the other side of I675 on Kemp Road and will open July 8th but the signs that have been put up around the construction say the road is closed to local traffic. He would appreciate help to get signs posted telling his customers that the road is open to his place. Mr. Moorman stated that he could have signs put up that are similar to the ones on Dayton-Xenia stating that the road is open to Frank's Fruit Farm.

David Wilkinson of 1489 Lemke Rd had more comments on the Zoning Ordinance. He stated that the City Charter Section 13.09 states "...deliberations upon official business will be done only in public meetings in accordance with the laws of the State of Ohio". He stated if that does not mean that we are supposed to use the methods of giving notice of hearings and meetings as they are in the ORC then the section means nothing what so ever, that's the only thing it can mean.

Executive Session

Mrs. Howard MOVED to enter into Executive Session at 7:27 p.m., pursuant to Section 121.22 of the Ohio Revised Code, for the purpose of the purchase of property for public purposes. Seconded by Mr. Hadley it was passed by roll call vote of 5 to 0.

Mr. Hadley MOVED to adjourn Executive Session, seconded by Mrs. Howard it was approved by roll call vote of 5 to 0.

Mrs. Howard MOVED to adjourn the meeting, seconded by Mr. Hadley. The motion PASSED by unanimous voice vote.

Mayor Vann

ATTEST:

Clerk
Cmin062209