

BEAVERCREEK CITY COUNCIL  
REGULAR MEETING July 13, 2009 6:00 p.m.

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

ABSENT: Mrs. Howard, Mr. Petrak

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

Mr. Hadley led the pledge and a prayer.

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

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

Mr. Leonard MOVED to Table the minutes for June 22, 2009, seconded by Mr. Hadley the Motion PASSED by unanimous voice vote.

Mr. Hadley MOVED to approve the minutes for June 15, 2009, seconded by Mr. Leonard the Motion PASSED by unanimous voice vote.

Mr. Leonard MOVED to approve the minutes for May 26, 2009, seconded by Mr. Hadley the Motion PASSED by unanimous voice vote.

PUBLIC HEARING – 2010 Tax Budget

Clerk Bucheit read a Resolution approving proposed amounts for inclusion in the 2010 Tax Budget for submission to the Greene County Auditor.

Mr. Kucera explained that he needed to submit the 2010 Budget to the County Auditor by July 20<sup>th</sup> for the meeting with the County Budget Committee based on estimated General Revenues, Property Taxes and Debt Service projections from certifications. This is just the first step in the budget process which will be refined as staff goes through the budget starting tomorrow trying to keep our current level of services, taking into account inflationary costs and contractual services. Right now the revenues are \$220,000 below 2009 budget but historically the auditor's estimates are lower than the final numbers. The budget will be finalized by staff for presentation to Council beginning in October or November.

There being no public input, the Public Hearing was closed.

Vice Mayor Giambrone stated that this process was a good part of the checks and balances to make sure that it is transparent and that everyone can see it and it is just the beginning. She asked if the revenue estimates were accurate in the past. Mr. Kucera stated that they were pretty close and with the economy maybe a little on the low side, but we have to use the numbers they give us.

Mr. Jarvis asked about Exhibit A on the Resolution and stated that it was not part of the package, he also wanted to know why the Special Assessments and Contractual Services were listed separately and not included on page one of the revenues. Mr. Kucera explained that the special assessments were a separate and distinct item broken out of the General Fund because they want to see if the revenue exceeds the debt service.

Vice Mayor Giambrone MOVED to approve Resolution 09-28 with correction to Exhibits 1-5 from Exhibit A and the correction of the Mayors name, seconded by

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Mr. Hadley it was approved by unanimous voice vote.

**ORDINANCE, RESOLUTIONS AND PUDS**

Ordinance 09-15 Levying Special Assessments for Construction and Installation of Street Improvements for the Mission Point Project (Third 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).

Vice Mayor Giambone MOVED to approve Ordinance 09-15, seconded by Mr. Jarvis it was approved by unanimous voice vote.

Ordinance 09-17 Levying Special Assessments for Construction and Installation of Street Improvements for the Ballymeade Project (Third 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)

Mr. Hadley MOVED to approve Ordinance 09-17, seconded by Mr. Leonard it was approved by unanimous voice vote.

Ordinance 09-16 Issuance of Bonds Not To Exceed \$900,000 for the Mission Point Blvd Road Construction Project (Third 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.

Vice Mayor Giambone MOVED to approve Ordinance 09-16, seconded by Mr. Hadley it was approved by unanimous voice vote.

Ordinance 09-18 Issuance of Bonds Not To Exceed \$220,000 for Ballymeade Road Construction (Third 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. Jarvis MOVED to approve Ordinance 09-18, seconded by Vice Mayor Giambone it was approved by unanimous voice vote.

Ordinance 09-19 Issuance of Bonds by Consolidation Not To Exceed \$1,120,000 for the Mission Point Blvd Project and the Ballymeade Project (Third 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 approve Ordinance 09-19, seconded by Mr. Jarvis it was approved by unanimous voice vote.

Ordinance 09-20 Issuance of Not to Exceed \$405,000 of Various Purpose Assessment BAN Series 2008, First (2009) Renewal (Third Reading)

Clerk Bucheit read an Ordinance providing for the issuance of not to exceed \$405,000 Various Purpose Special Assessment Bond Anticipation Notes, Series

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2008, First (2009) Renewal by the City of Beavercreek, Ohio in anticipation of the issuance of bonds.

Vice Mayor Giambrone MOVED to approve Ordinance 09-20, seconded by Mr. Hadley it was approved by unanimous voice vote.

Ordinance 09-21 Zoning Code (Second 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 that this is the final version and that there should not be any more changes, American Legal will check it for structure and numbering but other than that it should be good to go. He said he changed (D) on page 91 Planning Commission Public Hearing and Notice to read "Mailed notices shall be provided to all owners of property within 500 feet from the exterior boundaries of the area associated with the proposed PUD zoning classification or PUD amendments proposal. The City, at its discretion, may provide notice by other alternative means such as hand delivery, newspaper publication, electronic media, and any forms of notice utilized in lieu of mailed notice, to owners outside of the 500-foot boundary. The notice shall set forth the time and place of the public hearing and the nature of the proposed development. The failure to deliver the notice as provided in this section, so long as it is not intentional, shall not invalidate the public hearing or any decision on the application."

Public Hearing

David Wilkinson of 1489 Lemke Rd stated that he objected to the second reading because the first reading was not done in accordance with authorized procedures. Specifically because the City Charter, City Code of Ordinances the Ohio Revised Code do not authorize a public hearing at the first reading nor has Council and they do not authorize amendments to an ordinance between the first and second readings.

Mr. McHugh stated that the process that Council and the Clerk follow is the correct policy and is following our Code and the intent of the Ohio Revised Code. The policy is to provide notice for public hearings and that is what has been done and this ordinance has been advertised multiple times.

Mr. Leonard stated that the gentleman suggested that our Charter does not allow for a public hearing on the first reading and wanted to know if that was up to the discretion of Council. Mr. McHugh stated that it was up to the discretion of Council and that the issue in the courts is to be sure the public is given an opportunity for a public hearing and there have been multiple hearings during this process and the public has been well served.

Mayor Vann stated that we are exceeding the minimum standard and trying to be open and transparent and to provide as much opportunity as possible for people to be engaged in the process.

The Public Hearing was closed.

This Ordinance moves automatically to the Third Reading.

Ordinance 09-22 Supplement S-22 Code of Ordinances (Emergency)

Clerk Bucheit read an Ordinance enacting and adopting a Supplement to the Code of Ordinances for the City of Beavercreek and Declaring an Emergency.

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Mr. McHugh stated that these were changes to City Ordinances and also changes to the Ohio Revised Code and to bring our ordinances into compliance with the Ohio Revised Code the code book needs to be updated.

Vice Mayor Giambone asked if the reason it was an emergency was to allow code enforcement and police to be able to enforce the laws. Mr. McHugh said yes and that also it gives the police the opportunity to write tickets under the Beaver Creek Code instead of the State Code.

Mr. Jarvis stated that he had seen it updated already on American Legal and wanted to know the process. Mr. McHugh stated that it should not have been updated till after it was passed. Vice Mayor Giambone asked that they be contacted to make sure it was not up before it is passed.

There being no public input, the Public Hearing was closed.

Mr. Hadley MOVED to approve Ordinance 09-22 as an emergency ordinance, seconded by Vice Mayor Giambone it was approved by unanimous voice vote.

Resolution 09-30 To Authorize Temporary Modification of Sign Code for Kemp 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 Kemp Rd between Grange Hall Rd and the West Corporate Limits of the City of Beaver Creek and during the construction period of this same project.

Mr. Beach explained that this is similar to what was allowed on other road projects for commercial properties.

Vice Mayor Giambone MOVED to approve Resolution 09-30, seconded by Mr. Hadley it was approved by unanimous voice vote.

Resolution 09-31 Resolution Granting an Easement and Authorizing the City Manger to sign deed for Cemetery at Station 62

Clerk Bucheit read a Resolution accepting a Deed and granting an Easement to the Board of Trustees of Beaver Creek Township for the purpose of enabling the Township to located, construct, improve, use and maintain permanent sidewalks, curbs, parking spaces and a common private driveway serving as a means of access, ingress and egress to and from Dayton-Xenia Road, a publicly dedicated road, to a parcel of property owned by the Township and to three other parcels of property owned by separate parties and authorizing the City Manager to take all actions necessary to grant the Easement and accept the Deed.

Mr. McHugh stated this is a proposed easement which the City will grant in exchange for a deed for a cemetery on Dayton Xenia Road by the fire station which multiple parties have access to, this will clean up the title. The City reserves the right to park on the easement for the purpose of maintaining the cemetery.

Mr. Jarvis MOVED to approve Resolution 09-31, seconded by Vice Mayor Giambone it was approved by unanimous voice vote.

Resolution 09-32 Applying for TRAC Fund for Improvements to U.S. 35

Clerk Bucheit read a Resolution authorizing the submittal of an application for funding through the Transportation Review Advisory Council (TRAC) for the US 35 at Factory Road and Valley Road Interchanges Project.

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Mr. Beach stated he was asking for permission to request TRAC funding for the U.S. 35 Interchange Project. He stated that it had been in the TRAC funding process for the last several years submitted by MVRPC and they and the other public agencies believe that the City is the appropriate authority to submit the funding request. Mr. Beach stated that the City was not committing itself to any funding dollars because it is a Federal project for over \$100 million and we are trying to stay in the loop for funding until the environmental studies are finished.

Mr. Hadley stated this is the last section of highway on U.S. 35 from the western border all the way back to West Virginia that is not upgraded to limited access.

Mr. Jarvis wanted to know what our commitment was to this project. Mr. Beach stated that we would be responsible for non Federal eligible costs that would be added as part of a City request such as landscaping or extending a portion of the road that is not in the original plans.

Vice Mayor Giambone MOVED to approve Resolution 09-32, seconded by Mr. Hadley it was approved by unanimous voice vote.

Ordinance 09-23 Amending Ordinance 08-08 Youth Development Committee  
Clerk Bucheit read an Ordinance amending Ordinance No. 08-08 by amending the number of senior members of the Youth Development Committee and to expand those youths who may participate in the Youth Council.

Vice Mayor Giambone stated that the Council had a presentation by the Youth Council and they had requested additional adult advisors, requested further expansion of the students that may attend the Youth Council, and that senior members may be parents of children that live in Beaver creek or attend a school in Beaver creek. She stated that the Mayor had been very involved and passionate in this matter and Council appreciates it.

Mr. McHugh stated that the last two sentences in section II were also added and should be bolded that state what a quorum would be to for voting purposes.

Mr. Hadley MOVED to approve Ordinance 09-23 and move it to the second and third reading, seconded by Mr. Jarvis it was approved by unanimous voice vote.

#### LIQUOR PERMITS

##### Halls Corner Carryout-Transfer

Captain Evers stated the Ohio Division of Liquor Control sent police notification to transfer a C1, C2 liquor permit currently issued to BUJ Inc. DBA Corner Carryout and Drive Thru at 3891 Kemp Rd, to LEKH LLC., DBA Hall's Corner Carryout at the same address. A records check on Mr. and Mrs. Pranav Patel of Dayton, OH, no criminal records were found with this agency or in the State of Ohio.

Mr. Hadley MOVED to approve without comment, seconded by Mr. Leonard it was approved by unanimous voice vote.

#### CITY MANAGER'S REPORT

Mr. Cornell reviewed construction updates including the Dayton-Xenia Road Widening where a private company is presently relocating utility lines. The storm sewer is being placed on the north side of Dayton-Xenia Road east of Grange Hall.

The Kemp Road project is in the process of placing pavement and is expected to be completed and reopened by the middle or end of next week.

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Mr. Cornell stated a new project is beginning at North Fairfield and Fairwood Drive where the road will be widened to add a left turn bay and a traffic signal.

Mr. Cornell stated a signal improvement program for the arterials is underway along Dayton-Xenia and Fairfield with fiber optic being added as well as new LED signal heads to reduce energy consumption.

Mr. Cornell wanted to remind citizens that there will be a public hearing on the U.S. 35 Interchange Project as it relates to the ramps at Dayton-Xenia Rd and Linden Avenue, no date has been set yet but it is expected to be in August.

#### MAYOR'S REPORT

Mayor Vann stated that she attended a Dayton Development Coalition meeting this week and they are requesting that jurisdictions in the area have a direct link to their website and they have an agreement to be signed by the City.

Mayor Vann stated that on August 5<sup>th</sup> at 2:00 p.m. there will be a groundbreaking for Kettering Hospital in Beavercreek.

Mayor Vann stated that the 4<sup>th</sup> of July Parade was a success even with the rain. Mr. Hadley stated that there was very good entertainment and fireworks at Rotary Park after the parade but the attendance was lower than expected because of the rain.

Mayor Vann spoke about an article in Dayton Daily News on Sunday how many cities are cutting personnel and tapping other resources. She stated that this creates an opportunity for policy analysis and choices and she would like to suggest that staff do some research and give them some background on the role of income tax versus property tax and what the best balance is for policy alternatives.

Vice Mayor Giambone stated that an Earnings Tax is a very philosophical discussion and they need to follow what is on their strategic plan to consider first as a whole if they even want to have an Earnings Tax and then discuss how it would be done.

Mayor Vann stated that there is a lot of information to gather on this subject and that they should start to gather it now.

Mr. Leonard stated that the state of the economy is impacting the cities around us that have an income tax more than it is impacting us and he would hate to burden staff with the extra work and suggested that maybe RITA (Regional Income Tax Agency) might have some information that we could use. He stated that we do not have good information on what an earnings tax would bring into Beavercreek in terms of what do people earn in Beavercreek, how many people are there and what do business earn, so it would be difficult to make an analysis. Mr. Leonard wanted to know if there was something specific that staff could look at.

Mr. Hadley said he thought some preliminary research was ok but that a gentle approach at this time was the best route to take since there was over two years before they needed the information. There are some questions that need to be asked like what amount would we bring in and that could be researched. There will still be property tax because we cannot reduce the inside millage.

Mr. Jarvis thought that they needed to lay out the detailed plan before they got into the specifics.

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Vice Mayor Giambrone stated they cannot ask staff to research the subject until they define the parameters under which they would consider looking at an earnings tax to present to the public.

Mr. Cornell stated that he and Council had defined a pretty good action plan as a starting point in terms of where to go over the course of the next few years in terms of this analysis. A lot of what is being discussed tonight is part of what is to be done as part of the plan in 2010, this process will take quite a bit of time, and we do not want the defined action plan to become fragmented. He stated that they could do that if there is discussion during a Council work session to look at the action plan and discuss revisions that might need to be made to the plan because of impacts around us or to us that would be significant.

Mr. Jarvis brought up a discussion about stray cats and whether there was an ordinance that would make the owners more accountable. Mr. McHugh stated that there is an ordinance on companion animals and stated the cats could be declared a nuisance. He stated it is a misdemeanor of the fourth degree to allow an animal to run at large.

Vice Mayor Giambrone stated if these cats don't belong to someone what do you do, she thought it would be a good idea to report back. There was a consensus that Mr. McGrath should report back.

Mayor Vann stated that a citizen asked to have a vicious dog ordinance passed also and that should also be looked into.

Vice Mayor Giambrone stated that Council had an agreement with the Charter Commission to post a Community Resource Information Sheet about how to file Initiative and Referendum Petitions. This has been posted on the City of Beavercreek website under the City Charter.

Vice Mayor Giambrone stated that Universal One Credit Union offers two scholarships to its members every year and Jordan Whitaker of Beavercreek High School was the winner of one of those \$1000 scholarships, congratulations Jordan.

#### UNSCHEDULED SPEAKERS

Mr. Kucera stated that he wanted to go back to Resolution 09-28 as he has had a chance to reconcile the paperwork and has handed out the Schedule A which he used to compile the County Budget and should have been attached to this resolution.

Vice Mayor Giambrone made a motion for reconsideration for Resolution 09-28, seconded by Mr. Hadley it was approved by unanimous voice vote.

Vice Mayor Giambrone MOVED to approve Resolution 09-28 with Schedule A, seconded by Mr. Hadley it was approved by unanimous voice vote.

David Wilkinson of 1489 Lemke Rd wanted Council to know that the State of Ohio puts out a book called the Sunshine Law that they can get free of charge.

#### Executive Session

Mr. Jarvis MOVED to enter into Executive Session at 7:53 p.m., pursuant to Section 121.22 of the Ohio Revised Code, for the purpose of appointment of a public employee. Seconded by Mr. Hadley it was passed by roll call vote of 5 to 0.

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Vice Mayor Giambrone MOVED to adjourn Executive Session, seconded by Mr. Jarvis it was approved by roll call vote of 5 to 0.

Vice Mayor Giambrone MOVED to adjourn the meeting, seconded by Mr. Hadley the motion PASSED by unanimous voice vote.

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Mayor Vann

ATTEST:

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Clerk  
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