

BEAVERCREEK CITY COUNCIL
REGULAR MEETING AUGUST 8, 2011 6:00 p.m.

PRESENT: Council Member Giambrone, Council Member Howard, Council Member Petrak, Council Member Vann, Council Member Wallace, Vice Mayor Jarvis, Mayor Hadley

ABSENT: None

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

Mayor Hadley asked everyone to remember Don Gum, Beaver Creek Planning Commission member and Mitch Gray in your thoughts and prayers. They lost their lives while test piloting the Wright B Flyer Silver Bird when it crashed on July 30th.

Council Member Giambrone led the pledge, pray and a moment of silence.

Council Member Howard MOVED to approve the agenda, seconded by Council Member Petrak. Motion PASSED by unanimous voice vote.

Council Member Howard MOVED to approve the minutes of the July 11, 2011 Regular Meeting as amended, seconded by Council Member Wallace. Motion PASSED by unanimous voice vote. (Giambrone abstained)

Council Member Vann MOVED to approve the minutes of the July 18 2011 Work Session, seconded by Vice Mayor Jarvis. Motion PASSED by unanimous voice vote. (Howard abstained)

PUBLIC HEARING – Z-11-2 Joan Fink Rezoning to A-1 (First Reading)

Clerk Lampton read an application filed by Joan Fink, 3136 Indian Ripple Road, Beaver Creek, OH 45440. The applicant requests the rezoning of 11.05 acres of land from R-1A One-Family Residential District to A-1 Agricultural District. The property is located on the north side of Indian Ripple Road approximately 500 feet east of Secore Court further described as Book 6, Page 8, Parcel 34 on the Greene County Property Tax Atlas.

Applicant Presentation

Mrs. Fink explained she was seeking rezoning of the property for marketability. She said there has been interest in the property and has been asked if it was possible to have horses on the property. She is wishing to rezone the property to allow for horses and find a buyer.

Staff Presentation

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Mr. Burkett stated the applicant is requesting rezoning of 11.05 acres of land from R-1A one-family residential to A-1 agricultural. The property is located in southeast Beavercreek along Indian Ripple Road east of Trinity Nursing Home. He explained the property currently has one 5,600 square foot two story house and a small accessory structure to the north of the house. The house is located approximately 800 feet back from Indian Ripple Road with a single lane asphalt driveway. The lot is 388 feet wide and 1,275 feet deep. Mr. Burkett explained to the west of the property is Trinity Nursing Home, to the north is zoned for R1A single family residential, to the east is large lot agricultural properties, and to the south is R-1AA, single family residential. He reviewed the zoning history of the property explaining the property was rezoned from A-1 to R-1A in 2003 by a previous owner whose intentions were to split the lot which never evolved. He explained Mrs. Fink is looking to expand the marketability of the property and open it up to more buyers.

Mr. Burkett explained there was one concern by a neighbor regarding undesired smells because of the potential for agricultural animals with the rezoning. Mr. Burkett explained the possibility of a quit claim deed to allow for only four horses on the property and all other agricultural animals would not be allowed to be boarded on the property.

Council Member Giambone questioned the significance of four horses. Mr. Burkett explained the original wording proposed to the planning commission was "a few" and it was decided this was too ambiguous and changed to four.

Mr. Burkett stated staff recommends approval of this request.

Council Member Wallace questioned if the A-1 properties located to the east had any restrictions. Mr. Burkett replied no. Council Member Wallace expressed concern as to the intent of limitations on this property and questioned if it was discriminatory to have limitations stating agriculture is agriculture. Mr. McHugh did not believe it was discriminatory due to the location of developments to the west and north.

Public Input

Mr. Frank Fechek, 4308 Kemp Road, stated he is an owner of an agricultural zoned property. He said we try to refrain from spot zoning and yet these exceptions amount to spot zoning. He believes it complicates matters and agrees agriculture is agriculture, residential is residential, and business is business. He said what is in the zoning codes is a good idea.

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Council Input

Council Member Wallace questioned what happens when one of the four horses has a baby. She stated the small size of the property would be difficult for a farmer to have a farm.

Mr. Burkett explained the quit deed had not been filed with the County and there was opportunity to either amend it or not file it.

Council Member Giambone questioned if in the past there had been concerns regarding the A-1 properties to the east. Mr. Burkett stated they had received one resident's concern from Tarleton Drive. Council Member Giambone appreciated the resident's concern but since the property was A-1 until 2003 it was not unreasonable to go back to that zoning. She expressed her concern of imposing a limitation in an area where other A-1 zoned properties are not required to have that same limitation. It should be consistent. If there are no significant neighborhood complaints regarding the properties that are already A-1 this should not be an issue. Any time there is a nuisance it would be addressed regardless of the zoning. She questioned the zoning requirements for agricultural properties. Mr. Burkett stated they would be allowed to perform agricultural activities. She questioned if four (horses) was an arbitrary number. Mr. Burkett replied yes.

Council Member Howard questioned if the new property owners would have to come back to Council if they wanted to build any type of structure to accommodate any type of agricultural development for animals. Mr. Burkett replied they would not; they would have to adhere to the current zoning codes. There would be no need for more hearings. She explained she did not want to put restrictions on a property when those restrictions had not been applied to the adjacent A-1 properties. She stated with all the trees on the property it was not big enough to be farmland and conducive to a pig farm or something similar. She stated she was in favor of the applicant not being restricted.

Council Member Petrak verified that Mr. McHugh had stated there had been a restriction placed on another property. Mr. Burkett stated there was a property by one of the fire stations that had restrictions. Council Member Petrak liked the idea of the property being rezoned to agricultural and did not think the four horse limitation was a problem as it could alleviate problems in the future. His was remaining undecided at this time.

Council Member Giambone explained the properties to the east could currently put a chicken farm the property which was much larger. Council Member Petrak

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said this was an opportunity to make sure that this doesn't happen on the applicant's property.

Vice Mayor Jarvis stated that he supports the restrictions. He explained he thought the intent originally of rezoning it to R-1A was to make it more city like without having animals there and now we're going backwards. He could see keeping some of the restrictions that would have been there if it were still zoned as R-1A while still allowing the use of it for the sale as the applicant wants. If applicant is okay with this then he was okay with it. Vice Mayor Jarvis requested, if they did file the quit claim deed to use the term agricultural animals instead of livestock. This would be consistent with the ordinance verbiage.

Vice Mayor Jarvis stated that according to the specific regulations on A-1, "parcels which are zoned A-1 are less than five acres" and questioned how the 11.05 acres applied to this requirement. This was in subsection 158.030 of the Code of Ordinances. Mr. McGrath explained they revised the codes to be more specific with regards to agricultural regulations than they were in the past. Prior to the revision it stated anything agricultural but there are many A-1 parcels that are on half an acre. They are remnant parcels where owners were trying to utilize their property under the exemptions of agricultural when there are no agricultural activities. Mr. McGrath said they would have to go back and see if this is a typo. The zoning code does clearly state the intent is agricultural properties are not to be less than five acres. They would not consider rezoning to A-1 if the property is less than five acres. Vice Mayor Jarvis questioned if there are any setback requirements going from R-1A to A-1 that would need to be considered. Mr. Burkett explained if they wanted to build an accessory structure the setback requirements are slightly different for A-1 but the buildings as they are now would still conform to the A-1 rezoning.

Council Member Giambrone clarified if they wanted to build a barn they would have to adhere to certain setback standards. Mr. Burkett replied yes based on the zoning requirements at the time.

Mayor Hadley stated he would prefer the restriction not be limited to four horses. He did not want a large farm on the property but a limitation of the number would be acceptable.

Council Member Wallace requested Mrs. Fink to come forward and explain what she would like for the property. Mrs. Fink stated she would like to not have a number restriction for the horses. She said it is a beautiful piece of property and did not feel anybody was going to come in and raise anything other than horses.

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She felt it would not be beneficial to the owner to spend than money to destroy a beautiful piece of land with pigs and chickens. Council Member Wallace stated she drove up the driveway to see the property and said it was a beautiful home with a lot of trees there. It is mostly wooded and not a lot of pasture. The property itself limits the number of animals that you could have.

Mr. McHugh clarified that this does not meet the requirements of spot zoning. The zoning code references lots that are less than five acres are classed as residential and lists the requirements. He questioned Vice Mayor Jarvis's information. Vice Mayor Jarvis stated he referenced his information from the American Legal website which maintains the Code of Ordinances for the City of Beavercreek. Mr. McGrath explained within the intent of A-1 it does state the breakout parcels that the tax classification is residential for less than five acres. The zoning code states "parcels which are zoned A-1, are less than five acres, and are classified as "Residential" under "class" by the Greene County Auditor's Office, shall be considered as a residential use. Vice Mayor Jarvis clarified that there are different classes under A-1. Mr. McGrath explained there was not a better way to distinguish the two.

Council Member Vann questioned what tools there were in the tool box to address a situation of the density of animals or any other problem. Mr. McHugh explained there is a section in the Code of Ordinances under general regulations, section 91 titled "Animals" that have provisions along with provisions from the Ohio Revised Code.

There was discussion of there was a need to vote on the quit deed prior to voting on the Ordinance. There is no mention of the quit deed in the Ordinance. Mr. Burkett explained he would file the quit deed prior to the third reading should Council wish it.

Council Member Giambrone MOVED to approve Ordinance 11-19 as presented and move to the second and third reading, seconded by Council Member Vann. Motion PASSED by unanimous voice vote.

CITY MANAGER'S REPORT

Mr. Cornell explained he has been asked for updates on the Bullskin Run Bridge Repair Project. Mr. Moorman stated they had opened bids on July 29th and started the process to official award the project to the successful bidder. They are waiting on paperwork to be returned. The next step is to develop shop drawings and fabricate the beams. He stated the projected completion date would be around Halloween of this year.

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Mr. Cornell congratulated Officer Kevin Kovacs who is City of Beavercreek Exceptional Employee for third quarter 2011.

The next August Council meetings will be August 15th at 5:00 p.m. which is a work session and August 22 at 6:00 p.m. which is a regular meeting.

MAYOR'S REPORT

Mayor Hadley noted the City's flags had been flying at half staff in remembrance of Don Gum.

He stated the 9-11 steel beam was erected and put into place this morning which was an awesome event to watch. The 9-11 Memorial dedication will take place on September 11 from 10:00 a.m. to 11:00 a.m. The unveiling will occur at 11:00 a.m. The site is located on North Fairfield Road next to Beavercreek Station. There is limited parking at the site but there will be a shuttle running from the Lofino's parking lot on Seajay Drive starting at 9:00 a.m.

They are still accepting donations for the memorial which at tax deductible. Please make checks payable to the Greene County Community Foundation (GCCF). Thank you to all who have already donated and to those businesses that have donated material and their time in designing and building the memorial. Phase One is in need of \$20,000 to complete and Phase Two is projected to need a total of \$50,000. Congressman Steve Austria will be providing a flag that has flown over the State Capitol Building for the memorial.

COUNCIL TIME

Council Member Giambrone thanked the committee and the local businesses for their work on the 9-11 Memorial. She explained that if everybody donated \$25 there would be enough money for the memorial. We need to think long and hard about honoring the families and the folks who lost their lives.

She stated several had attended a ribbon cutting for Sahaj Marg Natural Path Meditation Center. It is a beautiful place where they are trying to build peaceful solutions to the problems in the world.

Council Member Wallace welcomed Jeff Schmitt Cadillac on the re-grand opening of their newly refurbished dealership. Thank you for being part of the community. Puzzles Plus had their ribbon cutting with the new owners. It is nice to see businesses re-investing in Beavercreek and we welcome them.

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Council Member Howard had the opportunity to visit with the National Guard. The National Guard sponsors an Indy 500 racecar. She was able to go into the pits, meet some of the drivers and see a video of the science of a NASCAR vehicle. She explained reservists are those who are called upon during a national emergency and appreciates the opportunity she had to spend time with the National Guard and their families. She thanked all of them and expressed her appreciation for all that they do.

Vice Mayor Jarvis said there have been a lot of new businesses open in the past two/three weeks. It is great that the entrepreneurs have a great confidence in our City.

Mayor Hadley said they attended the ribbon cutting of Anchor-Finlaw Chiropractic on Dayton-Xenia Road.

Vice Mayor Hadley stated many of the new businesses did not have formal ribbon cuttings.

Council Member Wallace explained that if new businesses join the Chamber of Commerce they will get a ribbon cutting.

Vice Mayor Jarvis said the La Leche League held an event at the Greene to promote breast feeding. This was an international event.

UNSCHEDULED SPEAKERS

There were no unscheduled speakers.

Council Member Petrak MOVED to adjourn the meeting at 7:00 p.m., seconded by Council Member Giambrone. Motion PASSED by unanimous voice vote.

Scott Hadley, Mayor

ATTEST:

Dianne Lampton

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Clerk of Council
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