

BEAVERCREEK CITY COUNCIL
REGULAR MEETING November 23, 2009 6:00 p.m.

Congressman Steve Austria swore in Scott Hadley.

PRESENT: Mr. Hadley, Mrs. Howard, Mr. Jarvis, Mr. Leonard, Mr. Petrak, Vice Mayor Giambrone, Mayor Vann
ABSENT: None

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

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

Mrs. Howard MOVED to approve the agenda. Motion was seconded by Mr. Hadley and was PASSED by unanimous voice vote.

Mr. Hadley MOVED approval of the minutes of the November 9, 2009 meeting. Motion was seconded by Mrs. Howard and was PASSED by majority voice vote. (Petrak, Jarvis abstained)

Mrs. Howard MOVED approval of the minutes of the October 26, 2009 meeting with changes. Motion was seconded by Mr. Leonard and was PASSED by unanimous voice vote.

Mr. Petrak MOVED approval of the minutes of the October 12, 2009 meeting. Motion was seconded by Mr. Jarvis and was PASSED by unanimous voice vote.

PUBLIC HEARING – PUD 06-5 SSP #2 Beaver Creek Business Park Phase I & II
Clerk Gillaugh read an application filed by EDB International Inc., 630 South Orchard Lane, Suite 301, Beaver Creek, OH 45434. The applicant requests specific site plan approval for 11.82 acres of land to allow for construction of Phase I, which will consist of approximately 50,000 square feet of self-store and lock facilities, and Phase II, which will consist of 2 office/warehouse buildings totaling 24,000 square feet located on the west side of Factory Road and approximately 3,000 feet south of U.S. 35. The property is further described as Book 6, Page 18, Parcel 55 on the Greene County Property Tax Atlas.

Alan Schaeffer, representing the property owner, discussed the location of the property and what currently exists on the surrounding properties. He explained it is a difficult piece of property to develop since it is in the floodplain and the sanitary sewer treatment plant is located across the street. Mr. Schaeffer said this property was rezoned in 2007, and stated several reasons this development had been slowed down. This application is for Phase I and II of the development

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and consists of mini storage buildings to the south and two office/warehouse buildings to the north. Mr. Schaffer discussed the 100-foot buffer along the southern property line, and explained the main access point to the site was moved to line up with the sanitary sewer treatment plant. He said the access onto Alpha Bellbrook Road has been changed to a full access point with a deceleration lane and a left turn lane. The road that will go through the property will be a private street, and the applicant does not intend for it to become a pass through street. Mr. Schaeffer reviewed the elevations of the buildings, and the type of building materials being used. The elevation difference was discussed along the southern and western property lines. The office/warehouse buildings will have the entrances off the back (west side) of the building, and are designed to accommodate panel trucks and not for semi tractor trailers. Mr. Schaeffer discussed the sign detail.

He stated a major issue with this property is the stormwater run-off. Mr. Schaeffer discussed the stormwater detention areas have been over designed to hold more stormwater than what is generated on the property. He explained the applicant spent a significant amount of time with Beaver Creek Township and the Greene County Engineer's Office regarding the flooding issue with Factory Road. Beaver Creek Township is currently working with Little Miami Incorporated, who has a large interest in this property and east of Factory Road where the flooding occurs.

Mr. Schaeffer discussed the landscaping for the site. He stated one element that is sometimes attracted to store and lock facilities is meth labs. The issue was discussed with the Drug Enforcement in Greene County, and they have never had a meth lab in a store and lock. He explained there will be 24 hour video security seven days a week, and the area will be fenced. An attendant(s) will be there during the work week, and Saturdays during the day.

Mr. McGrath summarized the staff report dated November 19, 2009, which stated the property was rezoned in 2007. He explained in the conditions of the rezoning approval, it specifically addressed that Factory Road is in Beaver Creek Township and any road improvements that are typically required on a PUD had to be reviewed and approved before the City would bring forward a specific site plan. Mr. McGrath stated he had the documentation that was reviewed by Bob Geyer at the County with 6 comments, and was passed on September 8th at the Township Trustees meeting with a 2-1 vote.

Mr. McGrath reviewed the building designs and elevations for the office/warehouse buildings, the mini-storage office buildings, and the mini-storage buildings. He talked about the elevation difference along the southern property line, and staff wanted to make sure there were residential designs

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incorporated into this project because of the close proximity to residential homes. Mr. McGrath discussed the 100-foot buffer along the southern property line, the fence design that will encompass the entire store and lock facility, the screening and landscaping requirements, and the access and improvements on Alpha Bellbrook Road. In the report from the County Engineer, it stated Factory Road did not need to be raised because it is an issue with the Little Miami River design. He explained there are ongoing conversations between Beaver Creek Township Trustees and Little Miami Incorporated as to what needs to be done in order to stop the flooding issues. Mr. McGrath reviewed the proposed signage, and showed the road improvements of U.S. 35 and how it will impact this site. He discussed several conditions, and Planning Commission and staff recommended approval with 32 conditions.

In public input, Laura Fike, 2690 Tara Trail East, stated she was surprised to hear Mr. Schaeffer's comment that prior plans for this site had not come before City Council since the time of the zoning. She explained her husband, she, and many of their neighbors were at the meeting when Mr. Hadley was Mayor. Mrs. Fike said plans were discussed numerous times, and they gave testimony several times. She noticed that the drawing brings the panel truck traffic and parking directly against the residential properties to the west, and thought it could be located along the Factory Road side. Mrs. Fike explained the 100-foot setback along the western property was at one point 100 feet of trees, and since those trees were removed there has been a great deal of noise pollution, light pollution, and pollution from the sewer plant. She asked if this plan was approved, if additional landscaping could be required to be installed along the west side of the property. Mrs. Fike explained she was concerned about the flooding. She stated she did read an article at a previous City Council meeting about the association that controls store and locks facilities nationally, and it is their concern that there are drugs and crime in store and lock facilities.

Douglas Sharp, 2629 Paydon Randoff Road, donated his three minutes to Mrs. Fike. Mrs. Fike read a letter they addressed to the Planning Commission. The letter is attached.

Al Fike, 2690 Tara Trail East, stated he had been in engineering and construction for 49 years and had been registered as a professional engineer in the State of Ohio since 1965. He understood the Planning Commission approved this request, and thought the City Council would approve the same request since Planning Commission has approved it. Mr. Fike said this process has been in motion for more than two years, and the surrounding property owners have been given the opportunity to speak at each of the meetings. He explained approximately 200 surrounding property owners got together and signed a petition expressing they did not want this development. Mr. Fike stated the

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surrounding property owners have watched the field fill up with water every time there is a major rain and the sawhorses go up across Factory Road. He said the US, GS, and EPA Ground Water Division labels this as a floodplain, and the Ohio Building Code has set limits between the top of the natural water level and the bottom of the building footings. Mr. Fike understood why so many of his neighbors have stopped coming to these meetings because he thought it appeared that Council was rubberstamping every case that comes through. He stated he has only seen one Council member vote against this development the entire time he has been coming to these meetings. Mr. Fike explained he looked on the internet where each Council and Planning Commission member lived, and he believed, without exception, they are surrounded in their private homes by proper zoning so their investment is protected. He questioned why the City does not actively protect the value of the property.

There being no further input, the public hearing was closed.

Mr. Hadley referred to the ground signs, and wanted to make sure the placement would not be a line-of-sight issue. Mr. McGrath said staff has not looked at the exact location, but Condition #28 could be amended to have the Engineering Department do an inspection to make sure there are no line-of-sight issues before installation of the signs.

Mr. Leonard referred to Mr. Fike's comment about their homes being protected, and explained the situation that he encountered. He wished there was a way that the City could educate every new home buyer of what could potentially occur in the proximity to the home he/she were interested in purchasing. He believed there was no way the City could get involved in that legally, but thought realtors could easily do that.

Mr. Leonard questioned if the applicant was going to haul dirt into the site to raise the elevations of the buildings above the floodplain. Mr. Schaeffer explained some dirt will be generated by the excavation of the ponds, and if more is needed then it will be hauled in. Mr. Leonard suggested adding a mound with landscaping where the grade is the same as the residents to the south. Mr. McGrath explained staff would be willing to look into it, but it would only be one or two lots that abut the pond before the grade starts going up significantly.

Mrs. Howard asked if the wetland and floodplain issues have been addressed. Mr. McGrath explained there was an environmental study done by the Army Corps of Engineers, and it was determined there was 0.07 acres of federal regulated wetlands on the site. He discussed the floodplain requirements, and said there is nothing that prohibits development within a floodplain as long as they meet all ODNR and Federal requirements for floodplain development. Mrs.

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Howard questioned if a condition needed to be added regarding the fence that is proposed. Mr. McGrath explained it is shown on the large plans that will be the set of approved plans if the application gets approved, and did not feel it was necessary to add a condition. Mrs. Howard asked how the access road would be kept as a private road, and what is going to be done to keep the traffic low. Mr. McGrath said nothing is going to be done because it will be open at all times, and discussed the design of the road. He said with a private road, the City does not have any maintenance responsibilities.

Mrs. Howard questioned if there would be 24 hour access to the storage facility. Mr. Schaeffer stated it will be manned from 9 am to 5 pm, and will have 24 hour camera security. He explained it will have a pass card security that would have access 24 hours a day. Mrs. Howard referred to the parking requirements, and asked why they are installing more spaces than required and if some of it could be left as greenspace. Mr. Schaeffer said there is additional property that may be developed in the future, and some of the parking may be used for that purpose.

Vice Mayor Giambrone did not believe Mr. Fike's comment was quite accurate because their property abuts Beaver Valley Road, and this Council approved a church and a bed and breakfast behind her house. She explained she did not vote on either of those cases because it directly impacted her property. Vice Mayor Giambrone thought these were the toughest issues that Council has to deal with because they have to balance the rights of two property owners, which is very difficult. She explained the Planning Commissioners are citizens that volunteer, and the City could use someone of Mr. Fike's caliber to apply to be on the Planning Commission since there will be a vacancy.

Vice Mayor Giambrone questioned how high the garage doors will be on the office/warehouse buildings. Mr. Schaeffer stated they will be eight feet high. She was concerned about the future development, and questioned what some of the thoughts and plans were. Mr. Schaeffer said with the limitations that were put on this property at the rezoning stage, the applicant is maxed out on the mini-storage units. He explained if there was future development it would be more in the nature of the office/warehouse buildings. Vice Mayor Giambrone said she was concerned because some citizens were bothered by constructing two and three story buildings, the lighting and the noise that was created, and thought there would be some issues if similar buildings were constructed along the western property line. She thought that anything Council could do to help screen the residents to the west the better because it would provide more of a buffer since the trees were removed. Vice Mayor Giambrone was worried about the trash and truck traffic in the office/warehouse area. Mr. McGrath said staff could condition that in the Motion. She questioned if Beaver Creek Township approved this believing it would not cause anymore flooding to Factory Road. Mr. McGrath

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stated that was correct. She was concerned with the applicant advertising rentals on the front of the property, which is something she had seen done at the store and lock facility on Pentagon Boulevard which is located in the Township. Mr. McGrath said a condition could be added prohibiting temporary signage on this property.

Mr. Petrak questioned if the land for the future phases will be graded with this development or in the future. Mr. Schaeffer explained the elevation rises along the border, and the property directly to the west of the store and locks has a very gradual slope. Mr. Petrak made a comment that the fence is a wrought iron security fence. He stated one thing he has thought about from the beginning is how this would be screened from the adjacent property owners, and one objectionable item is the whole line of garage doors on the south side of the building that faces the residential properties. Mr. Schaeffer explained there is a 100-foot buffer with substantial landscaping. He said there will also be an eight-foot fence that they will have to look through. Mr. Petrak said a suggestion would be to make that building solid brick on the back side. Mr. Schaeffer explained the applicant would be willing to address this issue from a landscaping perspective as opposed to the elimination of the half the building, and thought the applicant could address that issue to Council's satisfaction. Mr. Petrak stated he would leave it up to staff to address this issue.

Mr. Jarvis stated there is a tributary running through the property, and there is a bat and mussel in this area that needs protection. He questioned what was going to be done during the project to protect those. Mr. Schaeffer explained they have very stringent regulations they have to comply with in maintaining that tributary, and there is very little they can do to change it. Mr. McGrath discussed a letter that he received from the Army Corps of Engineers, which had multiple conditions that addressed Mr. Jarvis' concerns.

Mr. Leonard questioned if the stream ran into the retention pond. Mr. Beach stated the stormwater from the site is funneled into the detention basins, but the stream is a pass through. He explained the Army Corps of Engineers only wants the developer to touch the stream in very small increments and the two culverts that are crossing it, otherwise, they will be protecting that with silt fence and watching their construction activities to make sure the siltation does not affect the species both in the stream and the Little Miami River.

Mr. Jarvis said it was mentioned that the stormwater basins will hold more than is generated from the area, and asked where that water will be let out. Mr. Beach stated the water would go into the stream, and then into the road side ditch. Mr. Jarvis questioned if any water would flow downstream towards the residential properties. Mr. Beach said no, it will all go into the stream on the site and into the

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culvert under Factory Road. He discussed an overflow for the stream that does go a small distance south and then crosses Factory Road, but the residential properties are elevated and are already impacted when Factory Road floods. Mr. Jarvis asked what a quality pond is. Mr. Beach said it takes the first flush from the parking lots, and is an attempt to treat the water quality coming off the parking lots. Mr. Jarvis said the staff report referenced several other plans that would be reviewed later, and questioned when Council would be able to review them. Mr. McGrath stated the dumpster enclosure is handled administratively, and the lighting requirements are restricted in the Zoning Code. He explained when staff gets the PUD Agreement that bonds the landscaping, there is a specific landscape plan that is tied to that agreement that has the changes that were made in the conditions. Mr. Jarvis referred to the staff report and reference the 4-foot by 2-foot wall signs, and questioned where those will be placed on the buildings. Mr. McGrath stated those will be on the front of the buildings by the doors. Mr. Jarvis and Mr. McGrath discussed the directional signage on the site.

Mayor Vann said every other year this property floods, and it is the holding area when the Little Miami River overflows, and questioned where that water will be held if this parcel is developed. Mr. Beach said the determination of the holding area is based on elevation, and it will not affect the floodway width or the flood elevation because according to HEX studies it is based on the floodplain being filled in. The actual flood elevations on the Little Miami River and on the Beaver Creek are calculated based on the assumptions that these areas are filled in. He said there will not be a change in the floodplain delineation as a result of the filling of this floodplain. Mr. Beach stated people's property will not be impacted, and if anything, the flood elevations on the Little Miami River and the Beaver Creek may approach what they were originally calculated. He explained many communities do not allow it, but it will not exceed the calculated flood elevation. Mayor Vann and Mr. Beach talked about the reasons why many municipalities do not allow development in the 100 year floodplain, and the issue with this property holding the overflow water.

Mayor Vann said if homes were being built on this property, the homeowners would be required by the federal government to buy flood insurance, and did not believe the federal government would regulate what would happen to the belongings of those people who had a rental space in the store and locks. Bob Arnold stated the river is approximately 20 or 30 feet down from where this property is, and explained how much higher the property is above Factory Road. He explained no water stands on the property unless it is in the lake area, and discussed the topography of the whole site. Mr. Arnold said there is water that stands on the property to the north, but not on their property because of the elevation.

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Mayor Vann asked why the developer decided to give people pass cards with 24 hours a day access. Mr. Arnold stated the issue is if you don't allow people to access it after regular hours, they would not be able to use it because of people's work schedules. Mayor Vann was concerned with allowing people to have access overnight for safety reasons. Mr. Arnold stated other facilities are set up that way, and people don't use them in the early morning hours. Mayor Vann questioned if the applicant would be against having it closed between 10 pm and 6 am. Mr. Arnold thought it could be restricted some way, but thought it would hinder business if it was closed for those hours. There was a discussion between Mr. Arnold and Mayor Vann regarding this matter.

Mr. Leonard suspected the other store and locks were open 24 hours a day, and thought it would be worth looking into. Mr. McHugh said he knew of none in the City or around this area that had hours they were closed, but thought the issue was security. Mr. Leonard questioned if the security was monitored 24 hours a day. Mr. Schaeffer explained the swipe card will be monitored, and the surveillance video will be recorded and able to be played back if a problem occurred. Mr. Leonard questioned who would be a typical occupant of the office/warehouse area. Mr. Schaeffer stated a computer service operation. Mr. Leonard asked if anyone was pre-committed to this development. Mr. Schaeffer said no.

Mr. Leonard asked if Mr. Beach could go over how this development would fit into the interchange plans. Mr. Beach explained Factory Road would continue to the Yellow Brick Road intersection, and a new intersection will be constructed to the west, which is where the realignment of Alpha Bellbrook Road and Factory Road would occur. He stated the site under discussion is not affected by the interchange construction process. Mr. Beach and Mr. Leonard discussed where Factory Road would dead-end.

Vice Mayor Giambone questioned if that will eliminate some of the flooding on Factory Road. Mr. Beach explained that portion of the road would still be subject to flooding, but there would be no thru traffic.

Mr. Leonard discussed where the water would go from the river if the land to the west was filled. He proposed adding a condition, which would be voted on separately, regarding a six-foot mound being constructed along the southern property line west from Factory Road to help protect the first and second residential lots. He also stated the trees that would be planted along that property line should be staggered. Mr. Hadley thought six-foot is excessive, and thought a two or three-foot mound is sufficient. He also requested that white pine trees be prohibited. Mr. McGrath showed an aerial view, and it was determined there should be no mound installed.

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Mayor Vann questioned if Chief Turner had any concerns with the hours of operation. Chief Turner said the U-Haul on North Fairfield Road is open 24 hours a day, but someone lives at that site. He stated the officers would probably be coming from Alpha Bellbrook Road, and looking at the way it is designed, is probably not the best for them. Chief Tuner said the way Council is requesting buffers and trees, it will be difficult to see as a drive-by, but lighting, visibility, and security will be a key for the police. Mr. McHugh suggested making some changes to Condition #24 regarding the video surveillance and key pad be recorded 24 hours a day.

Mrs. Howard recommended adding the language to Condition #28 regarding an inspection being done by the Engineering Department prior to the installation of the ground signs.

Vice Mayor Giambrone and Mr. McGrath discussed the buffering to the west side of the property. It was determined an additional condition should be added to include evergreen planting in the landscaping islands to the west of the office/warehouse buildings.

Mr. Hadley questioned if there were requirements the road would have to meet since it is a private street. Mr. McGrath explained there are private street standards in the Subdivision Construction Standards that would have to be met.

Mr. Leonard asked if the residents to the west were notified of this development. Mr. McGrath explained everyone within 500 feet of the perimeter of the property was notified. Mr. Leonard said when the rezoning was approved, there were restrictions on what could be built, and questioned if there was anything in the rezoning that would restrict what type of tenants would be allowed. Mr. McGrath said staff has the Certificate of Use Compliance permit that is used to regulate tenants in this zoning. He discussed the permitted uses that were permitted within this PUD.

Mr. Petrak said Mr. Beach stated Factory Road flooded 16 times so far this year, and asked if any of those times it met the 100 year floodplain level, which means the road is below 100 year floodplain level. Mr. Beach stated that was correct. Mr. Petrak questioned if this property is above that level, and Mr. Beach said that was right. Mr. Petrak said the garage doors of the office/warehouse buildings are going to face the residents on the west side, and suggested adding a condition to prohibit the parking of vehicles overnight in that area or for long-term parking on the weekend.

Mayor Vann questioned if Council would like the garage doors on the other side

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since the main access will be Alpha Bellbrook Road when the interchange is completed. Mr. Petrak said what Mayor Vann suggested would work also or Council could make a condition to prohibit the parking of vehicles outside overnight. Mr. McGrath said a condition could be added regarding that issue.

Mr. Jarvis MOVED, for the purpose of taking administrative action, approval of a PUD Specific Site Plan for Beavercreek Business Park Phase I & II, PUD 06-5 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. He further moved 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 November 16, 2009" except as modified herein.
2. The approved elevations shall be the architectural drawings dated "Received November 16, 2009" except as modified herein.
3. A PUD Agreement must be signed by the owner and a bond or letter of credit 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 Planning and Zoning Department.
4. 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.
5. The final landscape plans shall include landscaping around the base of each of the ground signs and shall include shade trees along both sides of Business Campus Drive, and shrubs in front of the handicap parking spaces for the mini-storage office building. The final design of the landscaping shall be reviewed and approved by the Planning Department prior to the approval of the Landscape Plan. If after the landscaping has been installed, it has been determined by staff that an inadequate amount of screening has been provided for the residential properties to the south, staff reserves the right to require the applicant to install additional landscaping prior to the release of any portion of the landscape bond or landscape letter of credit associated with the PUD Agreement.

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6. The light fixtures and poles to be used within this development, along with a final photometric plan showing foot-candles to the property lines shall be reviewed and approved by the Planning Department prior to the issuance of a zoning permit for the building. All pole mounted light fixtures shall be located in terminal, interior or perimeter landscape islands.
7. A Final Subdivision shall be approved by the Planning Commission and all necessary bonds and fees shall be paid prior to the release of a zoning permit for any building within the PUD.
8. Business Campus Drive shall be constructed in its entirety as part of Phase 1 and 2 and shall be bonded as part of the Final Subdivision.
9. Debris and trash shall be routinely collected by the owner from the parking lot and grounds of all areas of the project including storm drainage facilities. The City reserves the right to require more frequent collection as deemed necessary.
10. The building exterior shall not be painted or altered in any way that varies from the approved elevations unless otherwise approved by the Planning Department or, if required, by the City Council and/or Planning Commission.
11. All man, service, loading dock, overhead doors and garage doors shall be painted to match the building per the approval of the Planning Department.
12. All trash collection containers shall be enclosed within a building or screened from view through the use of a permanent dumpster enclosure designed to match the building by using the same materials as those found on the building. The final design shall be reviewed and approved by the Planning Department prior to the issuance of a zoning permit. All ground mounted mechanical equipment shall be screened from view per the review and approval of the Planning Department.
13. All concerns of the City Engineer, Fire Department, Sanitary Engineer, Planning Department and the Beavercreek Police Department shall be addressed prior to the issuance of a permit for any building in this project.
14. All stormwater calculations and detention/retention plans shall be approved by the Engineering Department prior to the release of a zoning permit.
15. Aeration and water circulation devices and/or fountains are required for the retention pond(s) and shall be maintained by the owner, developer, or the condo association in perpetuity.

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16. All areas disturbed as part of the construction that are not part of the Phases I and II shall be restored, seeded and maintained and shall be free of noxious weeds and construction debris.
17. Downspouts shall be internally mounted and shall not be visible on the exterior of the structure or on any structure within this development except as specifically approved by the Planning Commission and/or Planning Department.
18. Material and color samples shall be submitted to the Planning Department for review and approved prior to the issuance of a zoning permit. The final color of the brick used on the building shall be approved by the Planning Department prior to the issuance of a zoning permit for the building.
19. The final design of all guardrails to be installed in the PUD shall be submitted to the Planning Department for review and approved prior to the issuance of a zoning permit.
20. Construction hours and trash pick-up hours for this PUD shall be limited to 7:00 AM to 7:00 PM, Monday thru Saturday.
21. Should any grading for the access points along Alpha-Bellbrook Road or Factory Road be on private property not owned by the applicant, the applicant shall be required to provide proof of permission to perform grading by the appropriate landowner to the Planning Department prior to the issuance of a zoning permit.
22. Four interior parking lot islands shall be added as shown on **Exhibit 1**. Each island shall include a shade tree and ground cover, to be included on the final landscape plan prior to the approval of the landscape plan.
23. Prior to the occupancy of any of the mini-storage buildings, the applicant shall submit and receive approval of a Certificate of Use Compliance. Prior to the occupancy of either of the Office/Warehouse Buildings, the applicant shall submit and receive approval of a Certificate of Use Compliance for each of the buildings.
24. Prior to the issuance of a Certificate of Use Compliance for the mini-storage units, the applicant shall submit a security plan for the mini-storage units to the satisfaction of the Police Department. The security plan shall detail the type of the required access restriction being used (i.e. security cards, fobs or PIN numbers) and the location of all security cameras located within Phase I.

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The mini-store and lock units within Phase I of this development shall be properly secured to the satisfaction of the Police Department at the specific site plan stage and prior to the issuance of a zoning permit and shall provide 24 hour recorded video surveillance and recorded keypad or card reader secured entrances.

25. All buildings shall incorporate four sided architecture and shall have no apparent rear.
26. The final design of the rear and side elevations of the mini-storage office building shall be reviewed and approved by the Planning Department prior to the release of a permit. The design shall incorporate the brick walls, with split-face block base, the same as with the other buildings in the development.
27. The brick used to construct the ground signs shall be the same brick used to construct the buildings.
28. The ground sign located at Alpha-Bellbrook Road shall incorporate the same column and cap design as shown on the ground sign to be located at Factory Road. The final design shall be reviewed and approved by the Planning Department prior to the issuance of a sign permit for either sign and shall not obstruct the line-of-sight for traffic entering and exiting the site as determined by the City Engineer.
29. There shall be no outdoor storage, display or sales within this PUD at any time unless approved by the Planning Commission. This includes but is not limited to the storage, display or sale of automobiles, recreational vehicles, material, equipment, machinery or merchandise.
30. A Floodplain Permit shall be reviewed and approved by the Planning Department prior to the issuance of a zoning permit.
31. Sidewalks a minimum width of five feet, shall be installed on each side of, and shall run then entire length of Business Park Drive.
32. Prior to the grading of the site, the applicant shall install a plastic orange fence around the perimeter of the entire area to be undisturbed by construction to ensure the protection of existing trees and groundcover. Immediately upon completion of the project, the plastic fence shall be removed.
33. Evergreen trees and shrubs shall be added within the landscape islands to the west of the two office/warehouse buildings.

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34. No vehicles shall be parked outside of the office/warehouse buildings on the west side overnight or for long-term parking on the weekends.
35. No temporary signs or banners are permitted within this development.
36. Additional landscaping shall be added to the south of the mini storage units. Such landscaping shall include evergreen trees, excluding white pines, and shall be planted in a staggered design pattern.

Motion was seconded by Mr. Hadley and PASSED by majority voice vote. (Vann opposed)

PRESCCHEDULED SPEAKER

Beavercreek Historical Society – Bob Zimmer

Bob Zimmer, 2381 Old Home Court, representing the Historical Society, stated he is a long time member and an official historian of the Beavercreek Historical Society. Mr. Zimmer invited Council to become members of the Historical Society. He explained their three goals are to preserve Beavercreek's structures and sites of historical significance, to develop and present community education programs, and to create a learning center for historical education. Mr. Zimmer said their inventory of historical sites and structures, which began in 2001, includes 37 structures and nine sites within the City and Township. He explained every third grade class in the public and private schools in Beavercreek participates in their Living History Program, which is held at Wartinger Park. Mr. Zimmer discussed the contents of the Living History Program, and what the students are able to take part in.

In September, in conjunction with the Flower Trail Garden Club, they held the Annual Heritage and Herb Days at Wartinger Park. In October, they had their Harvest Dinners, where they served 132 guests in the log cabins that were used by settlers as early as 1803. He discussed the working relationship that the Historical Society has with the Beavercreek Parks and Recreation Department. Mr. Zimmer said the structures at Wartinger Park were brought there and restored by their society and the Flower Trail Garden Club. He explained following the completion of the restorations, the City through the Parks Department furnishes all the utilities and maintains the exteriors of the buildings. The interiors are maintained by the History Society and they own the furnishings. Mr. Zimmer discussed two major building repairs that were completed at the Harshman House and the Ankeney House with their funds, since there were no funds available in the City budget. He explained they are grateful for Mike Thonnerieux, who serves as liaison, and City Council for their support.

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PUBLIC HEARING – PC 09-6 Land Use Plan

Clerk Gillaugh read an application for the purpose of addressing an amendment to the City of Beavercreek Land Use Plan. The proposal consists of amending the Land Use Plan designation for 8.41 acres of land on the west side of Lillian Lane and north of New Germany-Trebein Road from Regional Commercial/Office to High-Density Residential.

Mr. McGrath explained the procedure and process of how a Land Use Plan Amendment is requested. He summarized the staff report dated November 19, 2009, which stated Planning Commission requested staff to advertise for a public hearing and be brought forward regarding this amendment, and they recommended approval of the LUP amendment. Mr. McGrath showed the current Land Use Plan, and the proposed changes. He explained staff spoke to several office developers about the site, and they did not find the site desirable since it has no direct access, the property is odd shaped, and is located behind a retail center. Mr. McGrath stated the property fronts on Lillian Lane, which is a private road.

Mr. McGrath explained the developer would like to construct apartments similar to those built across the street. He stated Ashton Brooke Apartments has been a successful apartment complex within the City, and they have a 98% to 99% occupancy rate in the apartments already constructed. Mr. McGrath said the maximum amount of units they were allowed was 300 units, and with the density changes in the Zoning Code they are allowed up to 80 units.

There being no public input, the public hearing was closed.

Mr. Jarvis questioned why this change was requested so quickly since the Land Use Plan was recently updated. Mr. McGrath explained the Land Use Plan was looked at on a City wide scale, and was broken into quadrants. He explained the LUP is a future plan, and when the property owner brought this request to staff, it was looked at and is done on a case by case basis.

Mr. Petrak asked what the density was of the existing Ashton Brooke Apartments. Mr. McGrath said there are 300 units, which makes it approximately 10 units per acre. Mr. Petrak asked if the density will be similar. Mr. McGrath confirmed that was correct. Mr. Petrak stated this development has different attributes, and looking at the statistics that generate the most revenue, the offices are a great thing to have because they bring in more money. He felt if Council approved this application, it was his opinion they were giving up the most money making part of the development which was a concern to him. Mr. Petrak and Mr. McGrath discussed the issues that discouraged office developers from being

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interested in developing this site. Mr. Petrak thought by approving the LUP amendment would be a net loss for the City in terms of long term revenue generation. Mr. McGrath stated there are not many places left in the City on the LUP where high-density residential could be built. He explained a lot of the high density residential units that were going to be built on Pentagon Boulevard were changed to office developments, and there has been a significant reduction in the number of residential units that could have been built in that location. Mr. Petrak felt the City has an adequate supply of multi-family residential units, and did not see a need to build more of them. Mr. McGrath said if the Ashton Brooke expansion is taken away, the Land Use Plan does not make sense to have an office complex built on the site under discussion.

Mr. Leonard said he shared many of Mr. Petrak's concerns, and requested some history on the PUD and wondered if the developer caused this problem with the way he developed the buildings. Mr. McGrath gave the history of the development, and explained the concept was a mixed use development and did not see much potential for office development. Mr. Leonard did not feel like the City needed anymore high density residential developments. Mr. McGrath explained the owner has always owned the property, and since their apartments have been successful they could expand 80 more units that could be just as successful. He stated the owner left the land on the market for a while to entertain any office development, but no developers were interested in the land.

Mr. Petrak suggested at the retreat in January, they address the issue of how much more high density residential units they want to have and what the value is to it.

Vice Mayor Giambrone agreed with Mr. Petrak about not having anymore high density residential units in Beavercreek, but in this situation, it makes the most sense for this piece of property. She questioned if there was going to be a hotel built to the north of Lillian Lane. Mr. McGrath said staff had received an application for a hotel, but it was never approved. He explained that land was not considered in this application.

Mr. Leonard questioned if this land was in the Impact Fee District. Mr. McGrath said yes, and the City will get impact fees and park fees.

Mr. Hadley said he could not see the office buildings abutting the rear of the shopping center, but wasn't sure he liked the 10 units per acre concept either. He also understood the applicant needed to make a profit, and did not want to decrease those chances.

Vice Mayor Giambrone MOVED for second and third readings of Ordinance 09-

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33, seconded by Mrs. Howard. Motion PASSED by majority voice vote. (Leonard opposed)

PUBLIC HEARING – PUD 93-4 AMENDMENT 10/09 Ashton Brooke Phase IV
Clerk Gillaugh read an application filed by George J. Kontogiannis, 400 South Fifth Street, Suite 400, Columbus, OH 43215. The applicant requests approval of an amendment to the original rezoning and concept plan PUD 93-4 to construct 80 multi-family residential units. The property is located on the west side of Lillian Lane and north of New Germany-Trebein Road. The property is further described as Book 4, Page 2, Parcel 23 on the Greene County Property Tax Atlas.

George Kontogiannis stated he is the current owner of the land, and they have tried to market the land as offices for approximately ten years. He explained he could make more money if it was developed as office, and said he understood property taxes do provide income for the schools. Mr. Kontogiannis said they have approximately 25 children in the 300 units. He stated they typically rent to military personnel, graduate students, and other people in the community that have difficulties climbing stairs. Mr. Kontogiannis did not feel nice apartment complexes are a detriment to any community. He explained they have one vacancy in the current units, and know there is a demand for apartment complexes or they would not be so successful.

Mr. McGrath summarized the staff report dated November 19, 2009, which stated the property was rezoned to a MX-PUD in 1993 and has been amended twice since then. He discussed the proposed changes in the square footage calculations for each category of the PUD, and explained the applicant is requesting to increase the number of multi-family residential units from 300 to 380 maximum units. Mr. McGrath showed a concept plan, and said they already have setback requirements similar to what is in place in the existing residential units across Lillian Lane. He stated this approval is contingent upon the approval of Case PC 09-6, and when Ordinance 09-33 becomes effective. Staff and Planning Commission recommended approval of this case with 5 conditions.

There being no public input, the public hearing was closed.

Mayor Vann asked if there was a fence around the existing units. Mr. Kontogiannis stated there is not a fence around the entire property, but there are gates across the entry points for controlled access. He said when an issue has occurred, the Beavercreek Police Department has been very responsive and they are fortunate to not have many security issues with the apartments.

Mr. Jarvis questioned what the impact of traffic will be. Mr. Beach explained a traffic study is typically done at the specific site plan stage. He stated it would be

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about six trips per day per unit, which is no comparison to the thousands of trips for the amount of square footage that is permitted within this PUD. Mr. Jarvis asked what the small pond was labeled on the concept plan. Mr. Kontogiannis stated that would have to be filled in.

Mayor Vann questioned why that would have to be filled in. Mr. Beach said in the Subdivision Regulations it requires that drainage ditches be enclosed and piped. There was a discussion about the stormwater requirements for this site, and Mr. Beach stated they will be reviewed more when the applicant applies for the specific site plan application.

Mr. Leonard asked if the units will be the same quality as the ones across the street. Mr. Kontogiannis explained they will be very similar. Mr. Leonard questioned what the range of rents was. Mr. Kontogiannis stated the one bedroom is \$735, a two bedroom is from \$835 to \$919, a ranch is \$1100, and the townhomes which range from \$1200 to \$1400. Mr. Leonard asked if there would be townhomes in the new development. Mr. Kontogiannis said there would be no ranches, but there would be townhomes.

Mr. Hadley MOVED for second and third readings of Ordinance 09-34, seconded by Mrs. Howard. Motion PASSED by unanimous voice vote.

Decision PC 09-5 Frisch's Restaurant

Vice Mayor Giambrone MOVED to untable PC 09-5, seconded by Mrs. Howard. Motion was PASSED by unanimous voice vote.

Mr. McGrath explained the application consists of three lots to the west of Beaver Vu Drive. He stated the applicant is proposing to construct a Frisch's Restaurant, and the case was tabled at the last Council meeting because of traffic movement concerns. Mr. McGrath discussed the suggestions he had received from Council, and several ideas staff had put together to alleviate the traffic concerns. He explained with the traffic signal coming online in 2012, it was proposed to the developer to install a temporary traffic signal at the developer's cost. Mr. Beach estimated the cost to be about \$30,000 to \$40,000, and staff offered to set up an assessment district if the applicant wanted to absorb that cost over a period of time, which was something the applicant was not interested in. Mr. McGrath reviewed the letter the applicant had written in response to the proposal of adding a temporary traffic signal, which stated they would be willing to contribute \$10,000 to the signal but requested relief from the rear of the building. He showed and discussed the proposed new elevations of the buildings, and recommended nothing be changed on the east, south, and north elevations since those are visible from traffic. Mr. McGrath stated staff understands the rear

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elevation of the building is only going to be seen by employees and customers of the restaurant.

Mr. Hadley stated he has no issue if the ladder on the rear of the building was enclosed or not, and explained he disagreed with the proposal to not allow left in or left out turns at the last meeting. He said he was glad this case was tabled, and proposed a condition that a temporary traffic signal be added at the cost of the developer until the permanent signal is installed.

Vice Mayor Giambrone stated that was the issue, and she was ok with the changes in the Motion. She did not feel it was necessary to give the applicant relief on the north, south or east elevations.

Mrs. Howard thought the applicant could have a stripping of a right in/right only until the permanent light signal is installed. She questioned if Frisch's is not willing to consider the stripping of right in/right out. Jim Horwitz, Frisch's, stated they have done the right in/right out restaurant in the past and knows they will fail in that type of scenario, and cannot consider it. Mrs. Howard asked if it was only for a temporary basis until the permanent light was installed. Mr. Horwitz explained the situation he was in, and stated they had never built a restaurant this expensive before. He said they are over \$100,000 higher than the average of what they typically spend, and thought if they would require all the elements in the elevations and the traffic light, he would not succeed when he took the information back to the corporate office. He agreed that the north, south, or east elevations should not be changed, but they have to have full access.

Mr. Leonard said he understood the traffic concerns on North Fairfield Road, but was concerned about forcing something on a developer that is not enforced on other developments. He thought it was an excellent idea to have the stop light constructed there because of Beaver Vu Drive being across North Fairfield Road. Mr. Leonard questioned if there were any legal issues on forcing the developer to install the traffic signal or the right in/right out. Mr. McHugh stated it is a matter of judgment, but traffic does become an issue at a point. He explained the developer is willing to give \$10,000 for the temporary light, and thought this situation has risen in the past. He said it is up to Council to determine if that is reasonable or not for exchange on the rear elevation of the building.

Mayor Vann explained she had spoken to several people in the businesses in that area, and they are looking forward to the traffic signal to be installed.

Vice Mayor Giambrone thought this was a different situation because it was going to cause additional traffic.

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Mr. Jarvis questioned if an assessment was done to determine how much more traffic this was going to bring to this area. Mr. Beach said a restaurant of approximately 5,000 square feet is predicted to generate about 600 vehicles a day. Mr. Jarvis referenced some confusion between the staff report and Condition #22. Mr. McGrath said those two statements can be made into one condition, and the Police Department enforces the noise ordinance.

Mr. Hadley thought Mr. Beach's calculations of the cars in and out of the site will be low because everyone he talks to is highly in favor of the restaurant and its location.

Mr. Hadley MOVED to propose a 30th condition, which was regarding a temporary traffic signal to be installed at the applicant's expense until the permanent signal is installed by the City. Vice Mayor Giambrone seconded. After discussion, the motion PASSED by majority voice vote. (Leonard, Jarvis opposed)

Vice Mayor Giambrone MOVED that the approved rear elevation of the building shall be stamped "Received November 23, 2009", which would also amend Conditions #12 and #21. Mrs. Howard seconded the motion, and PASSED by majority voice vote. (Vann opposed)

Mr. Horwitz stated with the outcome of tonight's meeting, the applicant may not develop the site until the permanent light is installed, and would like a condition added about extending the approved application a year after the signal is completed. Mr. McGrath stated he would not be opposed to adding a condition regarding this matter.

Mr. Hadley MOVED to add Condition #32, which would allow this approval to not expire until one year after the completion of the permanent signal is installed by the City. Motion was seconded by Vice Mayor Giambrone and PASSED by unanimous voice vote.

Mr. Hadley MOVED, for the purpose of taking administrative action, approval of a ASRA Detailed Site Plan for the Frisch's Restaurant, PC-09-5, 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 ASRA Detailed Site Plan approval as per §158.083 of the Zoning Code. Supplementary conditions required of this approval shall be as follows. He further moved that this motion with all conditions be fully recorded in the minutes of this Council meeting.

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1. The approved plans for this development shall be the plans stamped "Received September 29, 2009", except as modified herein.
2. The approved building elevations shall be those plans stamped "Received October 2, 2009" and the west elevation shall be stamped "Received October 6, 2009" except where modified herein.
3. A detailed landscape plan shall be reviewed and approved by the Planning Department prior to the execution of the required Development Agreement and the release of a zoning permit for the restaurant. The final landscape plan shall include additional shrubs along the southern parking perimeter and shall show the replacement of the deciduous shrubs in the northwest corner of the paved area with coniferous shrubs.
4. Prior to the issuance of a zoning permit, all structures including houses, accessory building, pools and the like shall be completely demolished and removed from the site.
5. Any portion of the site disturbed by grading or by the removal of former residential structures and/or pervious surfaces and on which no construction occurs within three months after completion of the site grading, shall be planted with appropriate ground cover and properly maintained. Such areas shall be shown as part of the final landscape plan.
6. All existing curb cuts and driveway aprons of the three parcels within this application in front of North Fairfield Road shall be removed and replaced with new curb and gutter. This shall be shown on the final construction drawing, to be reviewed and approved by the Engineering Department prior to the release of a final subdivision.
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. A Development Agreement must be signed by the owner and a bond or letter of credit for the required 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.
9. All trash collection containers shall be screened from view and enclosed within a permanent dumpster enclosure or completely kept within the building.

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Any dumpster enclosures shall be constructed of materials to match the building, and fitted with a closeable, lockable gate.

10. 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.
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 Use Compliance has been submitted by the property owner or by the prospective occupant and approved by the City of Beavercreek.
12. Gutters, downspouts and roof access ladders shall not be visible on any elevation, except the west elevation, of the building. They shall be internally mounted. Thru-wall scuppers are permitted.
13. The façade shall not be painted or altered without the expressed approval of the Planning Department and/or Planning Commission.
14. The 5-foot sidewalk around the perimeter of the building shall be widened to 6 feet.
15. All service doors shall be painted to match the building.
16. Signage shall comply with the Zoning Code for B-2 district. The applicant shall be allowed to have two additional wall signs, the final location and size to be reviewed and approved by the Planning Department prior to the issuance of a sign permit.
17. The ground sign shall be no taller than 5 feet, and shall be on a brick base, to match the materials used to construct the building, and be located south of the entry point and shall not obstruct the line-of-sight for traffic entering and exiting the site as determined by the City Engineer.
18. The final photometric plan shall be reviewed and approved by the Planning Department prior to the issuance of a zoning permit for the building. 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.
19. All concerns of the City Engineer, Fire Department, Sanitary Engineer and the Planning Department shall be addressed and approved prior to the release of

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a zoning permit for the building.

20. A final subdivision must be approved by Planning Commission and recorded prior to the release of a zoning permit for the building. The final subdivision shall show the combination of the three lots into one new lot, and shall include a 25-foot wide public access and construction easement from the entry point to the northern property line and a similar 25-foot wide public access and construction easement from the southern property line through the nearest two or three parking spaces. If those two to three parking spaces are lost the applicant shall not be considered in violation of its approved ASRA Detailed Site Plan. The applicant shall dedicate the right-of-way needed for the installation of the proposed traffic signal at this location.
21. All roof top mechanical units shall be completely screened from the north, south, and east view from all directions with architectural features (roof forms or parapets).
22. The volume level of all outdoor speakers and order stations shall be kept at a volume that cannot be heard from the adjacent residential properties.
23. The western elevation shall incorporate all architectural features shown on the other three elevations, and shall be submitted to the Planning Department prior to the case moving forward to City Council.
24. The awnings on the north and east elevations shall be constructed with a cloth material.
25. The Construction hours shall be limited to 7am-7pm Monday through Saturday.
26. The hours of operation of this restaurant shall be 6am-10pm. There shall be no deliveries or trash pick-up prior to 7am.
27. The final landscape plan shall show adequate screening between this property and the residential neighborhood to the northwest. This shall be achieved by the use of existing trees supplemented with new coniferous trees. The final design shall be reviewed and approved by the Planning Department prior to the release of a zoning permit.
28. The applicant shall remove the tree at the northwest corner of the site and plant a solid row of evergreen shrubs around the parking and drive area to shield all headlights from adjacent residential properties to the northwest. In addition to the evergreen shrubs, the applicant shall plant fifteen (15)

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evergreen trees, excluding white pines, in a staggered design behind the shrub row to further screen the development from the residential properties to the northwest. The design shall be reviewed and approved by the Planning Department prior to the release of a zoning permit for the building.

29. The landscaping and screening shall be inspected after installation, by the Planning Department, to ensure appropriate screening is in place for the adjacent residential properties. The Planning Department reserves the right to require additional plantings to be installed if the Planning Department determines that the design, as constructed, does not and will not provide adequate screening. The additional plantings shall be installed prior to the release of any landscaping bonds or prior to the reduction of any letters of credit submitted with the PUD Agreement.
30. The applicant shall fund, an amount to be approved by the City Engineer, a temporary traffic signal prior to the issuance of any permits. The funding requirement shall be applicable until such time that the City begins, as determined by the City Engineer, the installation of the permit signal at the intersection.
31. The approved rear elevation shall be stamped "Received November 23, 2009".
32. This approval shall not expire until one year after the completion of the permanent traffic signal installed by the City.

Motion was seconded by Mrs. Howard and PASSED by majority voice vote.
(Vann opposed)

ORDINANCES, RESOLUTIONS AND PUDS

Ordinance 09-32 PUD 08-1 Amendment 9/09 Hindu Community (Second Reading)

Clerk Gillaugh read a Ordinance amending Ordinance #08-12 (C-PUD 08-1) by re-designating the 50-Foot buffer area in the northwest corner to a 40-Foot building setback and to allow for rooftop units, further described as Book 4, Page 4, Parcel 17 on the Property Tax Maps of Greene County, Ohio (PUD 08-1, Amendment 9/09).

There being no public input, the public hearing was closed.

This Ordinance automatically moves to the third reading.

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Ordinance 09-35 Update of Employee Manual (First Reading)

Clerk Gillaugh read an Ordinance Repealing Current Personnel Rules and Regulations for the City of Beavercreek and Adopting New Personnel Rules and Regulations for the City of Beavercreek.

Ms. Becker stated approximately one year ago staff reviewed and updated the entire Employee Manual along with the help of the Labor Attorney. She explained Council adopted the new manual on October 24, 2008, and there has been a lot going on with State and Federal Personnel Law. Ms. Becker said there have been several important revisions to the Family Medical Leave Act and the Military Leave Act that have already become effective. Ms. Becker stated by approving this proposed revised Employee Manual it will give the City the latitude needed when these other Federal statutes are passed and will also bring it into Federal and State compliance. She explained the changes can be broken into two categories, Compliance Issues and Clarifications. Ms. Becker reviewed a PowerPoint and discussed the proposed changes.

Mrs. Howard referred to Section 2.11, and questioned what the incentive was for a person who was working overtime on the weekend if they were only getting a 5% increase. Mr. Jarvis thought it would be skills gained that would be valuable for future promotions. Ms. Becker stated that is what is specified in the contracts, and this document is mirroring that.

Vice Mayor Giambone asked if a temporary position is on a volunteer basis. Ms. Becker said no one is forced to, and it is on a volunteer basis.

Mr. Jarvis and Ms. Becker discussed the maximum percentage given for a temporary assignment and how a person is able to receive a temporary assignment.

Under discussion of Section 4.02(M), Mr. Leonard questioned if there are time clocks at the Maintenance Facility and at City Hall. Ms. Becker explained there is one at the Maintenance Facility, and there is a fob key at City Hall.

Mrs. Howard questioned if everyone is required to fob in and out of City Hall. Ms. Becker stated that is up to the Department Director. Mrs. Howard said some department heads are requiring their employees to use it and others are not. Ms. Becker said that was correct.

Referring to Section 4.09(A), Mr. Hadley questioned if a person is in the military and was sent overseas for several years, would they receive several years of seniority when they returned. There was a discussion regarding this matter, and

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Ms. Becker said the Labor Attorney strongly suggested changing the word "shall" to "should" since there was no guarantee.

Under Section 4.09(B), Mr. Jarvis asked if the Federal Law now requires them not to lose any pay for being in the military service. Ms. Becker said yes, up to \$500 per month.

Referring to Section 4.11(E), Mr. Jarvis questioned what would happen to an employee who was not able to get a fitness-for-duty certification. Ms. Becker explained the employee would not be able to return to their job. There was a discussion between Mr. McHugh and Mr. Jarvis regarding this issue. Mr. Jarvis questioned if an employee is able to leave before FMLA is given. Ms. Becker stated yes an employee is able to leave before the FMLA certification is complete.

Under Section 4.11(H), Mayor Vann questioned what the timeline was. Ms. Becker said when the employee notifies her, she has three days to get a certification to their physician. Mayor Vann and Ms. Becker discussed a situation, and the correct procedure that would be followed.

There was a discussion regarding Section 4.11(M) between Mr. Leonard, Vice Mayor Giambone, and Ms. Becker.

Referring to the Employee Acknowledgement Form, Mr. Leonard questioned what a lawful reason to terminate an employee was. Mr. McHugh gave an example.

Mrs. Howard referenced B(8) under Section 6.03, and questioned if there was a lawful definition of what is incompetence or is that left up to the supervisor to determine. Vice Mayor Giambone asked if each job had their own set of competences. Mr. McHugh stated that was correct, and thought it was incompetence in the job. There was a discussion between Mr. McHugh and Council regarding this matter. Mr. McHugh said there has to be documentation that leads up to the conclusion to terminate an employee. Mrs. Howard stated an employee may be dismissed for smoking in an unauthorized area, and wanted to make sure that area was clearly defined. Ms. Becker said currently the City does have authorized and unauthorized areas, and explained it is state law. Mr. Hadley questioned if it is clearly stated some place. Ms. Becker stated it is posted outside on the building.

Mr. Jarvis said on the summary page under Section 4.11, Section P is missing. He said in Section 2.01(A) it refers to "military veteran's status", but in Section 2.01(B) it refers to "military status" only. He explained it only references military

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status in Section 5.23. Ms. Becker said those were changes by the Labor Attorney, and Mr. Cornell stated "veteran's" should be added. He also suggested making the language "race, creed, sex, age national origin" the same through Sections 2.01(A), 2.01(B), and 5.23(A). Ms. Becker said she would check with the Labor Attorney before changing any wordage.

Vice Mayor Giambrone MOVED for the second and third readings of Ordinance 09-35 with the changes that were discussed, seconded by Mr. Hadley. Motion PASSED by unanimous voice vote.

Ordinance 09-36 Amend Ordinance 09-15 which Levied Special Assessments on the Mission Point Project (First Reading)

Clerk Gillaugh read an Ordinance amending Ordinance No. 09-15, which levied special assessments for the purpose of providing certain improvements for the Mission Pointe project in the City.

Mr. Kucera stated he would present Ordinance 09-36 and Ordinance 09-37 together because it was the same scenario. He explained this was the Ballymeade and Mission Point Assessments, and in August 2009 Council passed Ordinance 09-15 and Ordinance 09-17 to issue a bond to pay off a BAN and to assess the property owners for their portion of the infrastructure improvements that were made. Mr. Kucera said they had a tight timeline to get the bond issued and paying off the BAN, and the deadline was missed because they were trying to consolidate the two bonds into one for assessing them in 2010. After talking to the Bond Council, they said the City needed to amend the two Ordinances to say that next year in lieu of the County Auditor billing them that Mr. Kucera would have the authority to. Mr. Kucera explained he had contacted both of the developers to explain what happened. He discussed the phone call he had with Mr. Crossley from Ballymeade Village, and the type of bonds that are issued.

Mr. Jarvis questioned what the deadline was getting these completed. Mr. Kucera said they needed to be in by September 14th for the County Auditor to have them assessed for 2010. He explained he would give them a 30 day notice once the three readings have been completed, and it will be like it was on their tax bills. Mr. Kucera stated it would be March before the bill is sent out, and the City gets it collected from them.

Mr. Petrak MOVED for the second and third readings for Ordinance 09-36, seconded by Mr. Hadley. Motion was PASSED by unanimous voice vote.

Ordinance 09-37 Amend Ordinance 09-17 which Levied Special Assessments on the Ballymeade Project (First Reading)

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Mr. Hadley MOVED for the second and third readings for Ordinance 09-37, seconded by Vice Mayor Giambrone. Motion was PASSED by unanimous voice vote.

Ordinance 09-39 Supplement to the Code of Ordinances

Clerk Gillaugh read an Ordinance enacting and adopting a supplement to the Code of Ordinance for the City of Beaver Creek and declaring an emergency.

Mr. McHugh stated this is something the City does once or twice a year, and this effectively codifies the City Ordinances, which has previously been adopted. He explained this is done as an emergency so the changes can take place immediately.

Mayor Vann said any local policy has already had three readings and has been adopted, and people were granted the opportunity to give their input at those hearings. Mayor Vann stated the importance is to get the Ohio Revised Code updated since the vast majority of those are police related so it is consistent with what has been passed. Mr. McHugh stated the majority are police related.

Mr. Petrak had a question about the Ordinance number being consistent with the agenda item report. Mayor Vann stated the Ordinance number is 09-39.

Mr. Petrak MOVED to approve Ordinance 09-39, seconded by Mrs. Howard. Motion PASSED by a roll call vote of 7-0.

Resolution 09-50 Application for ODNR Grant for Rotary Park

Clerk Gillaugh read a Resolution authorizing the submittal of applications for funding through the Recreational Trails Program (RTP) and/or Clean Ohio Trails Program (COTP) for the Rotary Park Hunter's Ridge Park Connector.

Mr. Thonnerieux stated he was requesting permission to apply for two grants through the Ohio Department of Natural Resources for the connector from Hunter's Ridge Park to Rotary Park. He explained he requested permission to enter into an agreement for the fence corridor in May 2009, and the fence corridor has been completed and this is the next phase of the project.

Mr. Jarvis asked what would happen if Beaver Creek Township was not able to follow through with this project. Mr. Thonnerieux said the City would not be able to move forward. Mayor Vann explained they have been working on this for a long time, and this is more Beaver Creek Township's project and the City is involved.

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Vice Mayor Giambrone MOVED to approve Resolution 09-50, seconded by Mr. Hadley. Motion PASSED by unanimous voice vote.

Mr. McHugh stated under Section 31.10(C), it is required that Council meetings are to be adjourned at 10:30 p.m. unless extended by majority vote.

Vice Mayor Giambrone MOVED to continue the meeting until conclusion, seconded by Mrs. Howard. Motion PASSED by unanimous voice vote.

COUNCIL TIME

Mr. Hadley thanked everyone that was here earlier for his swearing in, and appreciated Congressman Austria swearing him in.

Mayor Vann said the official swearing in of the other Council members will be at the December 14th meeting.

Vice Mayor Giambrone MOVED to adjourn the meeting at 10:40 p.m., seconded by Mr. Petrak. Motion PASSED by unanimous voice vote.

Mayor Vann

ATTEST:

Deputy Clerk