

## RECORD OF PROCEEDINGS

Minutes of *City Council*

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held *November 21*20 *11*

The Council of the City of Centerville, County of Montgomery, State of Ohio, met on Monday, November 21, 2011, at 8:00 P.M. in the Council Chambers of the Centerville Municipal Building. The Meeting was opened with an Invocation given by Pastor Chad Current of Living Hope Church, with the Pledge of Allegiance and with Deputy Mayor Doug Cline presiding. Councilmembers and City Staff present were as follows:

Councilmembers      John Beals  
                                  Paul Gresham  
                                  Belinda Kenley  
                                  Brooks Compton  
                                  James Singer

Clerk of Council Debra James  
 City Manager Gregory Horn  
 Finance Director Steven Hinshaw  
 City Planner Steve Feverston  
 Public Works Director Robert James  
 City Engineer Douglas Spitler  
 Assistant to the City Manager Jennifer Wilder  
 Assistant to the City Manager Kristen Gopman  
 Economic Development Administrator Nathan Cahall  
 Community Resources Coordinator Maureen Russell-Hodgson  
 Municipal Attorney Scott Liberman

Since Mayor Kingseed was out of town on vacation, Dr. Gresham moved to excuse him from the meeting. Mr. Beals seconded the motion. The motion passed with six ayes.

The minutes of the following meetings had been distributed prior to this meeting:

Council Meeting                      October 17, 2011.

Work Session Meetings              October 17, 2011.  
    November 7, 2011.  
    November 14, 2011.

Brooks Compton moved to approve the minutes of the foregoing minutes as distributed. Mr. Beals seconded the motion. The motion passed with six ayes. Mr. Singer abstained from the vote on the meetings of October 17, while Mrs. Kenley abstained from the vote on the minutes of November 14.

Mrs. James announced the receipt of the resignation of David Blake from the Stormwater Drainage Task Force.

Deputy Mayor Doug Cline administered the oath of office to three new members of the Stormwater Drainage Task Force—Dean Christolear, Merrill Durig and Kevin Von Handorf. He also welcomed Brad Thorp as a new member of the Board of Architectural Review and administered the oath of office to him. He noted Mr. Thorp's participation at Rotary, the Historical Society and the Heart of Centerville. He thanked the four for their service to the City of Centerville.

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Expressing pride in the team, Deputy Mayor Cline congratulated Drake Dunaway, Conner Lash, Austin Sipe, Steven Sveda and Caleb Wolters, members of the Centerville High School Golf Team that finished second at the Division I, State Tournament in Columbus this fall. Mr. Cline presented certificates of congratulations to the young men, except to Steven Sveda who was in Japan. Coach Jason Brandeberry summarized the exceptional accomplishments of the team. In response to a question from Mr. Compton, Coach Brandeberry explained the scoring and requirements of the tournaments.

During the Mayor's Report, Deputy Mayor Cline noted the following:

He congratulated Maureen Russell-Hodgson and other staff members for putting together an outstanding Veterans Day program at Stubbs Park on November 11, 2011.

He thanked Mr. Compton for emceeding the tree lighting ceremony at Benham's Grove.

He congratulated Mayor Kingseed, Mrs. Kenley, Mr. Beals and Dr. Gresham on being re-elected to their positions on Council and stated that he looked forward to continuing to work with them. He noted the cooperative attitude that existed within the group as they made tough decisions about the budget and capital improvement program in light of cuts in funding from the State of Ohio.

He attended the grand opening of Cassano's Pizza in the plaza south of City Hall.

He wished all citizens a "Happy Thanksgiving" with safe travel.

In the City Manager's Report, Mr. Horn noted the following:

Mayor Kingseed presided over the ribbon cutting of Earth Fare, a healthy supermarket, in Cross Pointe Center.

He thanked the public works employees involved in leaf collection efforts for staying on schedule and doing an outstanding job.

He announced that the University of Dayton is working with the City on a project related to the development of Cornerstone North at I-675.

He noted that mattresses set out for collection by the City must be wrapped in plastic or bagged, in order to protect City workers from coming in contact with bed bugs. The large bags are available at the Public Works Center or at home improvement stores.

For the eleventh year in a row, the Finance Department has received a CAFR (Certificate of Achievement for Excellence in Financial Reporting) award for financial reporting. He thanked Dr. Hinshaw, his assistant Elizabeth Ward and all the Finance Department staff for their work in obtaining the highest honors for governmental accounting.

Mrs. Gopman outlined code violations and their resolutions for the month of October, 2011, as well as the community calendar for the coming month. 264 illegal signs were removed in the past month. She covered items such as the Winter Market, Yankee Trace happenings, Arts Commission activities, and board & commission openings. Before December 9, residents may call 433-7151 with holiday lighting nominations.

In Committee Reports, Mr. Singer noted that the Stormwater Drainage Task Force had met on October 20, 2011. It reviewed 40 incidents related to stormwater drainage in the past year and made recommendations for the capital improvement program. Including the ones tonight, four new members have been inducted in the past months.

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Mrs. Kenley talked about her experiences being part of the Citizen Police Academy, a twelve week program where citizens find out more about the functioning of the Centerville Police Department. She thanked Officer Matt Dunn for organizing the event and named a number of officers who helped with the program. She reported that another Citizens' Police Academy will start in January.

Mr. Beals stated that he and Dr. Gresham attended the National League of Cities Conference November 9-12 in Phoenix. As a member of the Energy, Environment and Natural Resources Committee, he worked with the Green Cities' agenda and sustainability. He shared some of the interests, recommendations and accomplishments of the group. He talked about the mobile workshops he attended.

Dr. Gresham noted he had made two trips—one to Washington, D.C., and the White House and one to the conference in Phoenix. As a member of the Board of the National League of Cities, he spent a day in close conference with presidential staff and was present at a reception where President Obama spoke about the jobs act. At the National League of Cities Conference in Phoenix, the board passed policies and resolutions prioritizing issues for lobbying efforts on behalf of municipalities and elected new leadership. Dr. Gresham also attended workshops on families, economic development and infrastructure.

Deputy Mayor Cline explained that the Consent Agenda contains administrative matters that have been discussed during Council Work Sessions. Approval of these routine issues is as a group with one motion being made. Mr. Beals sponsored the following consent agenda items and moved for their approval:

- A. Ordinance Number 14-11, An Ordinance Amending Ordinance 14-08, Chapter 1216 Of The Centerville Municipal Code, The Unified Development Ordinance For The City Of Centerville, Ohio To Establish Development Standards For The Siting And Installation Of Solar And Wind Energy Systems be set for Public Hearing January 23, 2012.
- B. Ordinance Number 18-11, An Ordinance Approving The Editing And Inclusion Of Certain Ordinances And Resolutions As Parts Of The Various Component Codes Of The Codified Ordinances; Providing For The Adoption And Publication Of New Matter In The Updated And Revised Codified Ordinances; And Repealing Ordinances And Resolutions In Conflict Therewith be set for Public Hearing December 19, 2011.
- C. Ordinance Number 19-11, An Ordinance Declaring The Improvement To Certain Parcels Of Real Property To Be A Public Purpose And Exempt From Taxation; Establishing A Tax Increment Equivalent Fund And Providing For The Collection And Deposit Of Service Payments Into That Fund; Specifying The Public Infrastructure Improvements Directly Benefiting The Parcels; And Authorizing Make-Whole Compensation Payments To The Centerville School District be set for Public Hearing December 19, 2011.

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- D. Ordinance Number 21-11, An Ordinance Amending Sections 1420.01, 1424.01, Regarding Adoption Of Standardized Building And Housing Codes be set for Public Hearing December 19, 2011.
- E. Ordinance Number 23-11, An Ordinance To Amend Ordinance Number 17-10, Adopting All Fees, Rules And Regulations Associated With The Golf Club At Yankee Trace And Providing Compensation For Golf Professionals be set for Public Hearing December 19, 2011.
- F. Ordinance Number 25-11, An Ordinance To Amend Ordinance Numbers 23-93 And 7-03, To Establish Fees And Charges For The Rental Of Facilities At Benham's Grove be set for Public Hearing December 19, 2011.
- G. Resolution Number 46-11, A Resolution Adopting A Revised Thoroughfare Plan For The City Of Centerville, Ohio.
- H. Reappointments as follows:  
 Betty Lou Carney as a member of the Arts Commission for three years.  
 Jaime Garrett as a member of the Board of Architectural Review for three years.

Mr. Compton seconded the motion. The motion passed with six ayes.

PUBLIC HEARING: ROSS APPEAL OF SCREENING REQUIREMENTS FOR DUMPSTERS, 30-46 COMPARK ROAD

Mr. Feverston introduced the appeal of a decision of the Planning Commission requiring screening for dumpsters on Mr. John T. Ross's properties at 30-46 Compark Drive. Mr. Feverston located the property that is zoned I-1, Light Industrial, and gave the history of how this appeal came to Council. Mr. Feverston showed pictures of the area from June 2011 when six dumpsters were present and visible from the public right-of-way and from recently when eight dumpsters were present and overflowing. At its Public Hearing on August 31, 2011, Planning Commission did not find any hardship or practical difficulty that would deprive the owner of reasonable use of the property that would justify a variance.

The Compark/Westpark Rd. area was built out in the early 1960's when there were no regulations for screening dumpsters. The surrounding properties have legal non-conforming status for dumpsters that were in place prior to the enactment of screening requirements by the City in 1986. These dumpsters are not required to be screened.

When Deputy Mayor Cline opened the hearing for public comment, Attorney John Koverman of 120 W. Second Street in Dayton spoke on behalf of Mr. Ross. Mr. Koverman noted that Mr. Ross bought the two adjacent lots on Compark Road in 1991. He accused Mr. Feverston of intentionally trying to taint the Council's decision by mentioning the illegality of the tenants in 2010, before he noted Mr. Ross's compliance with all the other terms of the major site plan including the paving and striping of the parking areas, construction of a stormwater detention area, and sodding of the appropriate green areas. Landscaping is waiting for better weather for planting.

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Mr. Koverman gave arguments for granting the appeal.

- In his opinion the landscaping will offer adequate screening for the dumpsters. He said that the dumpsters have been overflowing because of the construction and showed pictures from earlier in the day with two dumpsters on the premises, instead of eight. The Carpet Store has arranged for a semi-trailer for recycling, eliminating the need for several dumpsters at this time.
- There are 11 lots along Compark; none have screening around dumpsters. Many are visible from Mr. Ross's property.
- Mr. Koverman read the text of the ordinance that requires screening and stated that the concern is for aesthetics, not sanitation. The buildings to the rear have no windows that face the dumpsters, so the landscaping along the street should be sufficient screening.
- He went through items mentioned in his letter dated November 17, 2011 and addressed to Mr. Scott Liberman, Municipal Attorney. Mr. Koverman questioned why paving a parking lot should constitute a change of use for the building and trigger conformity to the UDO.
- He quoted the minutes of the Planning Commission Meeting of August 30, 2011.
- Mr. Koverman agreed with Mr. Liberman's statements concerning non-conforming uses in the minutes of the Centerville City Council of Monday, July 18, 2011 from a discussion of uses in regards to the rezoning on Centerville Business Parkway. "The I-PD zoning would be in place from one owner to the next as long as there was no change of use to O-PD in the interim or intent to abandon the building." Mr. Koverman felt that dumpsters should go with the use and therefore the dumpsters should be grandfathered. If all of the uses in the building were appropriate for the district, he questioned why Mr. Ross should spend money to screen the dumpsters.
- Mr. Koverman quoted *Ohio Jurisprudence on Buildings and Zoning* which stated, "The benefits to the public health, safety and general welfare must outweigh the loss which the restrictions impose on the landowner. In ascertaining whether the public interest is served each case must be determined upon the particular facts." He made the point that the public does not drive down Compark Road to the same degree as larger connectors such as Franklin Street. Passers-by have little time to see the dumpsters so far from the street.
- He discussed the standards for approval of the variance, pointing out that they could be seen differently by his client and the City/Planning Commission.

Mr. Koverman offered to meet with staff to determine where those two dumpsters should be placed and suggested that the City change the ordinance that requires screening in I-1 zones.

In response, Mr. Feverston explained non-conformity and addressed this specific property. It was not the disrepair of the parking lot or the type of businesses that constituted the change of use triggering the loss of the legal non-conforming status, but the subdivision of the building for multiple tenants. The multiple tenants created a change in the needed number of parking spaces and in the needed number of unscreened dumpsters. Specifically, he pointed out that the properties had two dumpsters in 1998, not eight as in the recent past. The needs of the additional users were not grandfathered. The UDO specifically prohibits expansion of non-conformity.

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The standards for a variance that Mr. Koverman cited are texts out of the Unified Development Ordinance, Article 5.17. The Planning Commission looked at this checklist when they reviewed the variance request. As an example, there must be proof of hardship resulting from the strict application of this Ordinance that was not created by the property owner. In this specific case, the property owner did create the problem by subdividing the property to create a more intensive number of businesses for the property which necessitated more dumpsters on the property. The Planning Commission determined this property didn't rise to a hardship level where a variance ought to be granted and therefore it denied the request.

Mr. Compton asked Mr. Koverman if he could see any circumstance where the City could require screening the dumpsters. Mr. Koverman referred to the minutes of the rezoning hearing where Mr. Liberman stated that grandfathering for the current use would stay even from one owner to the next until the use became incompatible with the zoning district or the property was abandoned. Mr. Koverman stated that Mr. Ross had not made a change of use. All the tenants were appropriate for the I-1 zoning. Only if Mr. Ross asked for the property to be rezoned would Mr. Ross's property lose its legal non-conforming status. Mr. Koverman offered to place the dumpsters behind the building with none on the parking lot.

Mr. Feverston stated that the relevant section of the Code is on non-conforming structures, not non-conforming uses, and read the section. Structures (including dumpsters) may not be altered, enlarged or moved.

Mr. Beals expressed concern about the number of dumpsters and asked for clarification of the needs of the tenants. Mr. John T. Ross, the owner of 30-46 Compark Rd. who resides at 1290 E. Social Row Road, came forward to answer the question. He owns a number of properties at the corner of Franklin Street and Clio Road and has allowed his other tenants to put dumpsters on the property in question for convenience and concern for aesthetics. He stated that Bath Fitter uses three dumpsters, AutoSpot Repair has one, and The Carpet Store needs one regular dumpster in addition to the semi-trailer for recycling. The total needed is five at the present time. If the trailer for recycling does not work out for any reason, the number of dumpsters would increase. Mr. Ross showed the current locations of the trailer and the dumpsters on a map.

When Mr. Singer asked for clarification of the pivotal issues in this case, Mr. Liberman made the distinction between non-conformity of use with rezoning and non-conformity for the structure. The increase in the intensity of the number of dumpsters is not grandfathered; the intensity of the use cannot increase. Mr. Liberman redirected Council to the specifics of the appeal. The matter that came from the Planning Commission was a decision on screening for dumpsters on the site plan for the paved parking area on the northern lot. The variance is not about the dumpsters on the other lot. He stated that the argument may be able to be made that one unscreened dumpster may be grandfathered on the lot to the north. He noted that Mr. Ross had moved the dumpster from the lot in question.

Mr. Koverman stated his disagreement with Mr. Liberman over the sections of the code and stated that the movement of the dumpster was temporary. He threatened proceedings in

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common pleas court. Mr. Liberman reiterated that there are two separate sections of the code: non-conforming uses and non-conforming structures.

After Mr. Compton asked whether the issue of a semi-trailer created an additional complication that would affect the optimal order of the proceedings for Council. Mr. Horn stated that any ruling on the variance would be for dumpsters on the parking area on the northern lot. He recommended that Council uphold its ordinance on requiring any dumpster on the north to be screened. A second separate issue is the increase in debris and dumpsters on the lot to the south. He said that even if Council denied the appeal, staff would have to deal with these other dumpsters as non-conformities or as property maintenance items, unless these additional dumpsters were properly screened. Any semi-trailer on the property would need to be properly licensed and would become another enforcement issue.

Mr. Beals asked for clarification of the locations of the two dumpsters and the trailer on the property. It was concluded that no dumpsters were currently on the northern lot; all containers were located to the south. Mr. Koverman asked for direction concerning the placement of a dumpster on the northern lot, while maintaining that the two parcels were one premise.

Mr. Singer made a motion to have someone from the City talk to Mr. Koverman. Following discussion about the wording of a motion and about tabling the decision, Mr. Singer moved to table the matter to the next meeting. Mr. Beals seconded it. Mr. Koverman stated that he and his client were not opposed to waiting for a decision on the appeal until the January meeting. Mr. Singer withdrew his original motion; Mr. Beals agreed. Mr. Singer made a revised motion to table the decision on the appeal until January 23, 2012. Mr. Beals seconded the motion. The motion passed with five ayes. Mr. Cline voted against tabling the decision until the January meeting. The delay will allow time for discussions and for Council to process the large amount of information that had been presented over the course of the meeting.

## PUBLIC HEARING: ORDINANCE NUMBER 15-11 AMENDING PERMIT FEES AND REGISTRATION FEES OF THE CENTERVILLE MUNICIPAL CODE

Mr. Cahall gave the staff report on Ordinance Number 15-11 which is a periodic update of the schedule of fees for Planning Commission applications, zoning permit applications, and engineering inspection fees charged by the City. Most of the increases are modest. The goal is to cover more of the actual processing expenses for the services required, i.e., the costs for mailings and legal advertising. The fees for Engineering Inspections required with new developments have not increased for many years, so they have been adjusted. Staff considered the fees charged by surrounding jurisdictions in making these recommendations.

After noting that the Council had heard a detailed report in a recent work session, Mr. Compton sponsored Ordinance Number 15-11, An Ordinance Amending Chapters 1442 and 1444 Of The Codified Ordinances Of The City Of Centerville To Revise The "Permit Fees" And "Registration Fees" In The Centerville Municipal Code. Mrs. Kenley seconded the motion. The motion passed unanimously with 6 ayes.

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## PUBLIC HEARING: ORDINANCE NUMBER 16-11 REVISING THE FEE SCHEDULES FOR THE UDO AND ESTABLISH FEES FOR CERTAIN APPLICATIONS, PERMITS AND INSPECTIONS

Ordinance 16-11 is similar to Ordinance 15-11. Mr. Cahall stated that it also deals with periodic updates for the permits and inspections. The goal of staff has been to make the Building Inspection Department more self sustaining with less subsidies from the general fund. Toward that goal, the city manager and staff have worked diligently to reduce operating costs; on the income side, fees are being increased moderately. The Building Permit Fees were last adjusted in 2007.

Dr. Gresham sponsored Ordinance Number 16-11, An Ordinance Repealing Section 1214.02 Of The Codified Ordinances Of The City Of Centerville In Its Entirety And To Adopt A New Section 1214.02 Of The Codified Ordinances Of The City Of Centerville To Revise The Fee Schedules For The Unified Development Ordinance And The Establishment Of Fees For Certain Applications, Permits And Inspections Required By The Unified Development Ordinance Of The City Of Centerville, and moved for its approval. Mr. Singer seconded the motion. The motion passed with 6 ayes.

## PUBLIC HEARING: ORDINANCE NUMBER 17-11 VACATING THE EASEMENT FOR THE HANAUER-SPIEGEL PLAT, 2267 JAIME ROSE WAY

Mr. Feverston gave the staff report concerning the request for the vacation of the utility easement on the Hanauer-Spiegel plat at 2267 Jaime Rose Way. One of the conditions of Council's recent approval of the consolidation of the four lots into one was the vacation of the utility easement. Mr. Judge of Judge Engineering has notified all the utilities; DP&L, Ohio Bell, Time Warner, Vectren Energy and Montgomery County are all agreeable to the vacation. Once the easement is vacated, the replat can be recorded.

Mr. Beals asked if the vacation could be undone, if at some future time the owners wished to divide the lots. Mr. Feverston answered in the affirmative. An easement would again be needed to get utilities to the individual lots. Mr. Cline noted that the concern of the neighbors was for the covenants of the homeowners' association to carry over into the replat.

Ms. Marlene Black, 2201 Centerville Station Road, came forward to ask questions about the maintenance of the stormwater detention area and the fence line between her property and 2267 Jamie Rose Way. Mr. Feverston stated that the property owners would continue to be responsible for mowing and trimming. Ms. Black stated that, over the years, she had spent significant amounts on trimming the property line of honeysuckle and similar growth. Mr. Horn said that when vegetation grows across the boundary, neighbors have the right to trim to the property line.

Mr. Compton moved to vacate the utility easement between lots 3 and 4 on the Hanauer-Spiegel plat at 2267 Jaime Rose Way. Mr. Kenley seconded the motion. The motion passed with 6 ayes.



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Mr. Compton asked for the addition of remarks on the Hometown Holiday Walk to the officials' reports. He noted the excellent work of Maureen Russell-Hodgson and Sally Blommel in organizing the event and the entertainment for the tree lighting. He noted that Mrs. Phyllis Reed has brought the 5<sup>th</sup> grade chorus from Normandy School for the past 19 years; the Miami Valley Dance Company also performed.

## EMERGENCY ORDINANCE NUMBER 20-11 ADOPTING STANDARDIZED BUILDING AND HOUSING CODES

Mr. James explained that this ordinance is a housekeeping measure for adoption of the newest building and housing code standards. An update that was published by the Ohio Board of Building Standards, Division of Industrial Compliance, Ohio Department of Commerce became effective November 1, 2011. Since it is important for the City Building Inspection Department to be governed by these same regulations, staff is recommending approval of an emergency measure. Earlier in the meeting the regular Ordinance was set for Public Hearing on December 19, 2011.

Mr. Compton sponsored Ordinance Number 20-11, An Emergency Ordinance Amending Section 1420.01, 1424.01 Regarding Adoption Of Standardized Building And Housing Codes and moved that it be passed. Mrs. Kenley seconded the motion. The motion passed unanimously.

## EMERGENCY ORDINANCE 22-11 ADOPTING FEES RULES AND REGULATIONS FOR THE GOLF CLUB AT YANKEE TRACE

Mrs. Wilder introduced Emergency Ordinance 22-11 dealing with the fees, memberships, rules and regulations for the Golf Club at Yankee Trace, as well as compensation for the golf personnel. She noted that a full presentation will be made at the public hearing for the non-emergency ordinance in January. The emergency ordinance is needed so that rates are known as people make purchases for holiday gifts. Mrs. Wilder stated that rates for annual memberships will not be increasing, but there will be an \$8 increase in daily use fees. Other housekeeping items are included in the ordinance.

Dr. Gresham sponsored Ordinance Number 17-11, An Emergency Ordinance To Amend Ordinance Number 17-10, Adopting All Fees, Rules And Regulations Associated With The Golf Club At Yankee Trace And Providing Compensation For Golf Professionals, and moved for its approval. Mr. Beals seconded the motion. The motion passed with six ayes.

## EMERGENCY ORDINANCE NUMBER 24-11 ADJUSTING FEES AND CHARGES AT BENHAM'S GROVE

Mrs. Gopman gave the staff report for the emergency ordinance on the revision of the fee schedule for rentals at Benham's Grove. It is felt that Benham's Grove will still be competitive with the increases. In order for the changes to be effective for contracts signed January 1, 2012 and thereafter, the emergency ordinance is needed. A full presentation will be made at the January meeting when the public hearing for the non-emergency ordinance is held.

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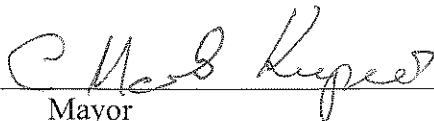
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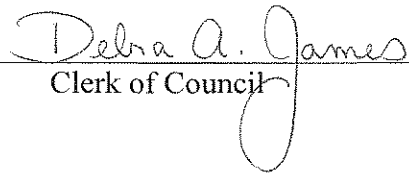
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Mr. Beals sponsored Ordinance Number 24-11, An Emergency Ordinance To Amend Ordinance Numbers 23-93 And 7-03 To Establish Fees And Charges For The Rental Of Facilities At Benham's Grove, and moved for its approval. Dr. Gresham seconded the motion. The motion passed with six ayes.

There being no further business, the meeting was adjourned.

Approved:   
Mayor

ATTEST:   
Clerk of Council