

## RECORD OF PROCEEDINGS

Minutes of COUNCIL

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held November 1520<sup>04</sup>

The Council of the City of Centerville, County of Montgomery, State of Ohio, met on Monday, November 15, 2004, at 8:00 P.M. in the Council Chambers of the Centerville Municipal Building. The Meeting was opened with an Invocation given by Pastor John Bradosky of the Epiphany Lutheran Church and City Chaplain,\* with Mayor C. Mark Kingseed presiding. Councilmembers and City Staff present were as follows:

|                                    |                    |
|------------------------------------|--------------------|
| Deputy-Mayor                       | Douglas Cline      |
| Councilmembers                     | Susan Lienesch     |
|                                    | Paul Gresham       |
|                                    | James Singer       |
|                                    | Robert Corbin      |
|                                    | Brooks Compton     |
| Clerk of Council                   | Marilyn McLaughlin |
| Assistant Clerk of Council         | Debra James        |
| City Manager                       | Gregory Horn       |
| Public Works Director              | Robert James       |
| Finance Director                   | Mark Schlagheck    |
| Economic Development Administrator | William Covell     |
| Assistant to the City Manager      | Jesse Lightle      |
| Assistant to the City Manager      | Jennifer Wilder    |
| Assistant City Engineer            | Aaron Zonin        |
| Municipal Attorney                 | Scott Liberman     |
| Chief Building Official            | Douglas Filaseta   |

Hometown Holiday Santa Clauses representing foreign countries were introduced. They extended an invitation to all for the holiday ceremonies planned for November 21, 2004, in the heart of Centerville.

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

Council Meeting - October 18, 2004.  
 Work Session Meetings - October 18, 2004.  
 - November 1, 2004.

Dr. Gresham moved that the minutes of the foregoing meetings, as distributed be approved. Mrs. Lienesch seconded the motion. The motion passed unanimously.

Mayor Kingseed announced the grand openings of the following establishments:

Esther Price Candies  
 Game Crazy  
 Sarpino's Pizzeria  
 Beef O'Brady's Family Sports Pub  
 Skyline Chili  
 Roc-A-Fellas

Mr. Horn reported the following during his City Manager's Report:

Appreciation was expressed to Centerville City Staff for the Veterans' ceremony held on November 11, 2004 in the Leonard E. Stubbs Memorial Park.

*\* and the pledge of allegiance to the flag,*

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On Tuesday, November 16, 2004, the 2005 Budget for the City of Centerville will be reviewed, beginning at 6:00 P.M. in the Law Library.

On Wednesday, November 17, 2004, a meeting of the Create the Vision Implementation Task Force will be held beginning at 7:00 P.M. at the Washington Township Government Center.

Leaf pick-up is running a little late due to weather conditions.

The Dayton Business Journal has nominated Centerville as one of the three finalists for the Government of the Year Award along with the Miami Valley Regional Planning Commission and Five Rivers Metro Parks.

Jennifer Wilder has been employed as Assistant to the City Manager and Douglas Spittler as the City Engineer. Mr. Spittler will begin employment with the City on January 3, 2005.

Miss Lightle reviewed code violations and resolutions for the month of October, 2004.

Mayor Kingseed explained the Consent Agenda which contains items of a procedural nature. Approval of these issues will be as a group with one motion being made. He highlighted the cooperation between the City and Washington Township relative to the improvement and expansion of the parking lot to serve the center of town. He announced the reappointments of Heidi Miller and Laverne Stebbins as members of the Board of Architectural Review and the resignation of Mary Stockmyer as a member of the Sister City Committee.

Mr. Cline moved that the following Consent Agenda items be approved:

1. Ordinance Number 13-04, An Ordinance Amending The Centerville Municipal Code, Part 14 Building And Housing Code, Chapter 1424 National Electrical Code, And Adopting The 2005 Electric Code-NFPA 70-2005 By Reference. Public Hearing be set for December 20, 2004.
2. Ordinance Number 14-04, An Ordinance Amending The Centerville Municipal Code, Chapter 1422 To Adopt The Residential Code Of Ohio For One, Two And Three Family Dwellings 2004 Edition, Including Appendix J And Local Amendments. Public Hearing be set for December 20, 2004.
3. Ordinance Number 16-04, An Ordinance Amending Chapter 1444 Of The Centerville Municipal Code To Eliminate The Bond Requirement, To Adjust The Registration Fee And To Make Other Administrative Changes. Public Hearing be set for December 20, 2004.
4. Ordinance Number 18-04, An Ordinance To Amend Ordinance Number 23-03, Adopting All Fees Associated With The Golf Club At Yankee Trace And Providing Compensation For Golf Professionals. Public Hearing be set for December 20, 2004.
5. Ordinance Number 19-04, An Ordinance Amending Ordinance Number 11-86, The Zoning Ordinance Of The City Of Centerville, Ohio To Amend Sections 14 And 37 In Accordance With The Provisions Of Chapter 713 Of The Ohio Revised Code And Enacting Chapter 838 Of The Centerville Municipal Code Relating To Adult Entertainment. Public Hearing be set for January 24, 2005.
6. Resolution Number 39-04, A Resolution Ratifying The Action Taken By The City Manager To Enter Into A Lease Agreement Between The City Of Centerville And The Ohio Department Of Public Safety, Bureau Of Motor Vehicles, be passed.

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7. Resolution Number 40-04, A Resolution Authorizing The City Manager To Enter Into A Parking Lot Expense Agreement Between The City Of Centerville And The Board Of Trustees Of Washington Township, be passed.
8. Resolution Number 41-04, A Resolution Accepting The Bids Submitted By Green Velvet Sod Farms And Turfgrass South For The Purchase Of Fertilizer For The Golf Club At Yankee Trace And To Authorize The City Manager To Enter Into Contracts In Connection Therewith, be passed.
9. Resolution Number 42-04, A Resolution Accepting The Bids Submitted By Green Velvet, ProSource One, And Turfgrass South For The Purchase Of Chemicals For The Golf Club At Yankee Trace And To Authorize The City Manager To Enter Into Contracts In Connection Therewith, be passed.
10. Resolution Number 43-04, A Resolution Designating A Public Depository And Awarding Public Moneys (WesBanco Bank, Inc.), be passed.
11. Resolution Number 44-04, A Resolution Authorizing And Directing The City Manager To Take All Steps And Execute All Documents Necessary In Order To Effect The Purchase Of The Real Property Located At 43 West Franklin Street, Centerville, Ohio, be passed.
12. Reappoint Heidi Miller as a Member of the Board of Architectural Review.
13. Reappoint Laverne Stebbins as a Member of the Board of Architectural Review.
14. Accept the Resignation of Mary Stockmyer as a Member of the Sister City Committee, with regret.

Mr. Corbin seconded the motion. The motion passed unanimously.

## ORDINANCE NUMBER 11-04 PROHIBIT SMOKING

The Public Hearing was held concerning Ordinance Number 11-04.

Peter Flaherty, 30 Bradstreet Road, called for a Point of Order, claiming that this Public Hearing was not advertised. Mrs. McLaughlin clarified the fact that it was posted in five of the most public places in Centerville and it was published on the Centerville web site.

Mayor Kingseed explained the procedure to be followed during this Public Hearing concerning an Ordinance to prohibit smoking in public places and places of employment in the City of Centerville.

Mr. Horn advised that the City Staff has reviewed very closely the legislation considered in Columbus, Bowling Green and Toledo for this same purpose. The proposed Ordinance is very similar to the legislation passed in Columbus, Ohio.

Mr. Liberman outlined areas which the Ordinance regulates and does not regulate and exceptions to the regulations. He explained the responsibilities defined in the Ordinance for proprietors and employers.

Ron Timmerman, 6719 Eddington Court, Chairman of the Smoke Free Centerville Committee, urged Council to quickly pass the proposed Ordinance banning smoking 100 percent in public places; second hand smoke has no positive impact upon people; it has no place in business; he explained how second hand smoke puts a drain on economy relative to health care costs.

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Ron Rentz, 911 South Main Street, proprietor of Centerville Lanes, pointed out that a ban on smoking has had a major impact on other communities. He outlined revenue losses he as well as the City will experience if such an Ordinance is passed. He believes that if there is a ban on second hand smoke it should be statewide.

Mark Case, Director of Environmental Health of the Combined Health District of Montgomery County, outlined the effect second hand smoke has had on health problems. He gave statistical data relative to cancer and heart disease deaths as well as childhood diseases. Childrens' lungs are not developed well enough to handle the contaminants found in second hand smoke. He believes this is a critical health measure. Mr. Case encouraged Council to pass the proposed Ordinance as written.

Christopher McDonald, 90 South Johanna Drive, asked that the smoker's freedom of choice not be taken away.

Adrian Rose, 104 Cushwa Drive, offered some statistics according to the Environmental Protection Agency report. He identified second hand smoke, main stream smoke and side stream smoke; all second hand smoke provides cancer causing chemicals; it is a serious health risk to children.

Curtis Delk, 6610 Green Branch Drive, owner of the Soft Rock Café, explained that all of his employees smoke, clientele come to his establishment to be with other smokers. He highlighted potential problems with customers going outside to smoke. Passage of this Ordinance puts employees and businesses on an uneven playing field. He advised that he looks after his customers trying to eject smoke from the café.

Diane Butler-Hughes, 3853 Callaway Court, explained that she worked in restaurants for seventeen years, breathing second hand smoke. She has been diagnosed with cancer which has crushed her dreams and the dreams of her husband. She asked Council to protect the health and lives of people who work in Centerville by passing the proposed Ordinance.

Dave Ulrich, one of the owners of Tailgaters, 6270 Far Hills Avenue, identified his establishment as a friendly family restaurant. Many of his employees and customers smoke. Passage of this Ordinance will cause layoffs and business closings which will affect the economics of the City of Centerville. Mr. Ulrich believes the Ordinance is unfair.

Paula Kaufman, 145 Tranquil Trail, pointed out that smoking is not permitted at any of the schools or school functions in Centerville.

Bill Hammert, 6421 Kings Grant Passage, owner of Elsas Restaurant, emphasized the economic impact this Ordinance will have on businesses and the City of Centerville. He identified this as a very emotional issue. Smoke or smoke free should be the prerogative of the business owners.

Diane Beneke, 6525 Fieldson Road, asked Council to support passage of the proposed Ordinance. She is a cancer victim; more women are struck with cancer from second hand smoke than men. If other Cities can go smoke free, so can Centerville.

Tim Gorman, partner in Tailgaters, advised that if smoking is banned in Centerville, customers will go elsewhere to eat. He asked that Council leave smoking in Centerville status quo.

Ken Hahn, 311 South Village Drive, pointed out that opposition to the smoking ban is based on strong support of individual rights in opposition to government infringing on their personal liberty. He believes that government must act to provide people with the right to good clean air. Smoke is a threat to one's health.

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Steve Leen, owner of MacDigger's Pub, 29 East Franklin Street, advised that his customers come to his establishment in order to smoke. He asked Council to listen to the restaurant owners. He questioned what Centerville is doing for the small businesses.

David Roer, 9350 Patriot Woods Court, President of the Centerville City School Board, asked Council to do the right thing, vote on this issue tonight.

Stephanie Seals, 2049 Randy Scott Drive, West Carrollton, a supporter of Centerville Lanes will not come to Centerville if smoking is banned; she will go somewhere else.

Wait Cahoun, 5471 Mad River Road, believes people will come to Centerville if made smoke free.

Bob Moore, 250 Bethel Road, stated that high school students pass his house daily smoking cigarettes, a ban will not stop this. He does not believe that it is the nature of government to take this action; it should be the right of a business to decide its capability.

John Bradosky, 388 Yankee Trace Drive, Pastor of the Epiphany Lutheran Church, does not believe people should have to breathe second hand smoke. He asked Council to look after the health, safety and well-being of people in Centerville.

Joe Collins, owner of the White Rabbit Cocktail Lounge, 889 South Main Street, asked Council not to mingle in business; this Ordinance will put him out of business.

Utsav Goel, 1448 Ashbury Park Place, believes second hand smoke affects everyone. He will continue to fight for clean fresh air.

Rosalie Sammarco, 89 Tranquil Trail, expressed concern that Centerville will lose current businesses and new businesses if a smoke ban is put into effect in this small community.

Kimberly King, 2740 East Spring Valley Road, cited statistics gathered relative to health effects on employees from second hand smoke in bars and restaurants. A smoking ban does not eliminate smoking; it just limits smoking in public places.

Pete Flaherty, 30 Bradstreet Road, believes in the free market. It is clear that bars, restaurants and the bowling alley will suffer. He cited problems with studies relative to second hand smoke; there are many different kinds of studies. Mr. Flaherty cautioned Council that there is no rush to judgement.

At this point in the meeting, a ten minute recess was called by Mayor Kingseed.

Bill Bines, Deputy Health Commissioner with the Combined Health District of Montgomery County, clarified the fact that studies are true; second hand smoke does cause deaths. Studies show that a smoking ban does cause businesses to lose customers in the short term, but in the long term their clientele increases. He suggested that a short term type of economical help be considered for businesses if this Ordinance is passed. Centerville has the opportunity to be first to pass such an Ordinance. He offered the City of Centerville complete cooperation and assistance in this matter.

James MacLennan, 74 Benzell Drive, expressed concern that passing this Ordinance could lead to control of other things; is this the beginning of government micro managing businesses?

Winston Baldwin, 8365 Paragon Road, Pastor of the Centerville Adventist Church, advised that Adventist Churches encourage parishioners to be non smokers. He believes that these people will appreciate a smoke free environment in restaurants.

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Ron Rentz read a letter from Kristine Severyn, RPHPHD, which stated that government actions should be based on valid studies. The whereas statements in the Ordinance are not scientific facts. It is not her nor the City that should decide whether or not a customer should be permitted to smoke in restaurants. Mr. Rentz explained how they have smoke free days and events at the Centerville Lanes; he tries to create a family atmosphere.

Alisa French, 361 South Village Drive, pointed out that many health agencies are opposed to second hand smoke; this is a public health issue, not a political issue. She asked Council to look at both sides of the issue.

In answer to a question of Mr. Cline, Mr. Bines advised that in Franklin County an increasing number of Cities are passing such an Ordinance and the Franklin County Health Department would assist in public education and enforcement for all the Cities so that the enforcement would be uniform. Mr. Bines explained that if the Cities in Franklin County adopt such an Ordinance, most of the geographic area within Franklin County would be smoke free and there would not be a long term impact on business. Businesses in the township would know that it is ok to go smoke free.

Dr. Gresham advised that he would love for the entire Montgomery County to become smoke free. Mr. Bines explained that the Board of Health in Lucas County, several years ago, adopted a countywide regulation which prohibited smoking in work and public places and began enforcement of that regulation. The regulation was opposed by restaurants and bar owners and the Ohio Supreme Court ruled that passing a non smoking regulation was not an authority that a local Board of Health possesses.

Mr. Corbin pointed out that Franklin County is an urban County controlled by Cities.

Upon question of Mrs. Lienesch, Mr. Bines stated that he did not know where economic help would come from for those businesses adversely impacted by such an Ordinance.

Mr. Bines explained that local Health Commissioners will begin grass root efforts to get an initiative on the election ballot statewide. This is very costly, and will take from three to five years.

Mrs. Wilder reviewed the Ordinance passed by the City of Toledo and defined changes made thereto. She read the definition for bars included in the Ordinance.

Upon question of Mayor Kingseed, Mr. Horn advised that Police Chief Steve Walker is uncomfortable with the fact that the proposed Ordinance requires that a warning be issued to a violator. There may be times when the officer may want to issue a citation. Mr. Horn outlined other areas of concern in the Ordinance expressed by City Staff.

Mayor Kingseed suggested that judgement on the proposed Ordinance be deferred for further study and review of testimony heard at this meeting. Mr. Corbin moved that Ordinance Number 11-04, An Ordinance Prohibiting Smoking In Public Places And Places Of Employment In The City Of Centerville, Ohio, be tabled until the December 20, 2004 Public Meeting. Mr. Compton seconded the motion. The motion passed by six ayes in favor of the motion; Mr. Singer voted no. Mayor Kingseed explained that if substantial changes are made to the Ordinance, an additional Public Hearing will be held.

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## ORDINANCE NUMBER 12-04 FLOOD DAMAGE PREVENTION

The Public Hearing was held concerning Ordinance Number 12-04. Mr. Zonin explained that periodically the Federal Emergency Management Agency goes through a mapping revision process to update the flood insurance rate map. Revisions are made in the flood boundary and improvements in mapping technology. The Ohio Department of Natural Resources has determined that Ordinance Number 4-99 did not meet the National Flood Insurance Program minimum requirements. Revised mapping has taken place and this proposed Ordinance meets all minimum requirements. Mrs. Lienesch advised that the Stormwater Drainage Task Force reviewed this map and was very pleased. Mrs. Lienesch sponsored Ordinance Number 12-04, An Ordinance Repealing Ordinance Number 9-87 And Ordinance Number 4-99, To Provide A Flood Damage Prevention Ordinance For The City Of Centerville, Ohio, and moved that it be passed. Mr. Cline seconded the motion. The motion passed by unanimous vote.

Joseph Koussa, 1537 Beaver creek Lane, asked that the troops come home safely, and encouraged listeners to save on gasoline. He also congratulated the City of Centerville for taking the lead with smoke free legislation.

## ORDINANCE NUMBER 15-04 CONTRACTOR REGISTRATION AND FEE

Mr. Filaseta reviewed a proposed Ordinance to eliminate the requirement of a bond from contractors and to increase the fee to \$100.00. A license is required by the State of Ohio. Mr. Cline sponsored Ordinance Number 15-04, An Emergency Ordinance Amending Chapter 1444 Of The Centerville Municipal Code To Eliminate The Bond Requirement, To Adjust The Registration Fee And To Make Other Administrative Changes, and moved that it be passed. Dr. Gresham seconded the motion. The motion passed unanimously.

## ORDINANCE NUMBER 17-04 GOLF FEES

Miss Lightle outlined some changes recommended by Staff to golf fees at The Golf Club at Yankee Trace for the year 2005. Increases are proposed in golf league fees, golf instruction, and in Vintage golf rates. Miss Lightle advised that this Ordinance has been prepared as an emergency in order to have it in place for the 2004 holiday season. Mr. Corbin sponsored Ordinance Number 17-04, An Emergency Ordinance To Amend Ordinance Number 23-03, Adopting All Fees Associated With The Golf Club At Yankee Trace And Providing Compensation For Golf Professionals, and moved that it be passed. Mr. Cline seconded the motion. The motion passed unanimously.

Mrs. Lienesch, on behalf of all Council, congratulated Debra James for her accomplishment, joining the International Institute of Municipal Clerks Master Municipal Clerk Academy program.

There being no further business, the meeting was adjourned.

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Approved: *C. Mark Kengseed*  
Mayor

ATTEST:

*Wanda J. Smith*  
Clerk of Council