

# RECORD OF PROCEEDINGS

Minutes of *COUNCIL*

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held *June 24, 2002*

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The Council of the City of Centerville, County of Montgomery, State of Ohio, met on Monday, June 24, 2002, 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, and the Pledge of Allegiance to the Flag with Mayor Sally Beals presiding. Councilmembers and City Staff present were as follows:

Deputy-Mayor C. Mark Kingseed

Councilmembers James Singer

Paul Gresham

Douglas Cline

Roger Krass

Susan Lienesch

Clerk of Council Marilyn McLaughlin

Assistant Clerk of Council Debra James

City Manager Gregory Horn

Assistant City Manager Judith Gilleland

City Planner Steve Feverston

Public Works Director Robert James

City Engineer Norbert Hoffman

Economic Development Administrator Chris Pozzuto

City Horticulturist Michael Engler

Municipal Attorney Robert Farquhar

Assistant to the City Manager Jesse Lightle

Mr. Kingseed reclused himself from this meeting due to the fact that Voss is a client of the law firm, Dinsmore and Shohl, of which he is a partner and would have a conflict in the matters to be considered during this meeting. He further pointed out that he has not participated in any of the discussions Council has had on these issues up to this point.

## APPEAL TO COUNCIL PARKING LOT LANDSCAPING VOSS CHEVROLET

The Public Hearing was held concerning an Appeal filed by Judge Engineering Company, on behalf of John Voss, 90 and 100 Loop Road, against a decision rendered by the Planning Commission during their meeting on Tuesday, May 14, 2002. Mr. Feverston explained that the Applicant applied for a Variance from the requirements of the Zoning Ordinance to provide no interior parking lot landscaping. He advised that the Variance was denied by the Planning Commission, thus requiring interior landscaping equal to 8 percent of the total area of the parking lot as defined by its perimeter. He located the subject property on a map, being situated on the north side of Loop Road, and defined the area involved in the construction of an auto body shop for Voss Chevrolet. The zoning of the property is B-PD, Business-Planned Development. The applicant submitted a drawing to City Council proposing the placement of landscaping on the southwestern portion of the site in various locations as well as using the west setback area to satisfy part of the 8 percent requirement. The applicant also proposes the placement of landscaping along the north perimeter to the 100 foot buffer strip. This would help to provide a buffer between the development, Village South and the Villager Apartments. Mr. Feverston advised that the basis for the Appeal and the Variance was that trees promote environmental

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hazards to newly freshly painted cars with regard to tree sap, bird droppings, etc.

David Greer, partner in the law firm Bieser, Greer and Landis, was present at this meeting to represent Judge Engineering and Voss Chevrolet. He clarified the fact that the parking lot in question is not going to be a customer parking lot, it will be used for car inventory, for employees, and for the storage of vehicles waiting for restoration. Mr. Greer cited that the concept for interior landscaping in a parking lot was for shopping centers, for customer parking, to provide aesthetics. The proposed parking lot will have no visibility from Loop Road, the south, east or west and would have no benefit from interior landscaping. He explained that what the applicant has proposed instead of the 8 percent in the middle of the parking lot would improve the entire area and would provide landscaping between 11 - 12 percent around the perimeter which would be a benefit to the public.

Phil Whittaker, 360 Whittington Drive, speaking in opposition of the Variance and Appeal stated that all standards for the Variance were not and have not been met. He does not see the requirement of 8 percent interior landscaping in the parking lot as a hardship; cars can be parked where they will be in open areas. This Variance in the City of Centerville is not creditable.

Upon question of Mr. Cline, Mr. Greer advised that the present buildings will remain in place, landscaping would be in the perimeter of the parking lot of the two buildings, it makes more sense to place landscaping on the perimeters. Mr. Feverston explained a plan prepared by City Staff for the placement of landscaping which would satisfy the 8 percent landscaping requirement in various areas of the south, west and north perimeters. Mr. Cline, recognizing that 12,000 is better than 8,000 and being more particularly concerned that the northern border is as aesthetically pleasing as possible, moved that the Appeal be denied with the provision that the applicant shall be allowed to utilize landscaping on the perimeter of the property towards the 8 percent landscaping requirement with particular emphasis on the northern border of the proposed development with any final plans subject to City Staff approval. Dr. Gresham seconded the motion. A roll call vote resulted in five ayes in favor of the motion. Mrs. Lienesch voted no.

**PLANNING COMMISSION SPECIAL APPROVAL APPLICATION - VOSS  
COUNCIL REQUEST FOR REVIEW**

The Public Hearing was held concerning City Council's request for review of a Planning Commission Special Approval Application submitted by Judge Engineering Company, Agent for John Voss, for the construction of a 48,000 square foot auto body shop repair facility together with a parking lot. Mr. Feverston reviewed this Application for the development of property located on the north side of Loop Road approximately 660 feet east of State Route 48. The Applicant proposes to combine the lot occupied by Voss Dodge and the lot occupied by Voss Chevrolet into one lot, thus eliminating the common side lot lines and eliminating side setbacks for the proposed expansion of the facility. The combined acreage involved is 14.353 acres. The size of the proposed building has been reduced to 46,637 square feet with 245 parking spaces on the site. The zoning of the property is B-PD, Business-Planned Development. Mr. Feverston located the subject property on a map, being located at 90 Loop Road and identified adjacent land uses. The site plan includes the two existing buildings, the proposed auto body shop, a retaining wall of various heights along the west property line as well as a retaining wall of various heights just north of the 100 foot buffer zone. There will be no encroachment into the buffer zone. Mr. Feverston showed slides depicting the topography of the land and views from different areas

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surrounding the proposed development. He explained a graphic which identified the slope from the proposed building through the buffer and through residences on Colechester Court. Mr. Feverston explained how the building meets all architectural requirements as well as building materials. The Planning Commission found it to be compatible with surrounding buildings. As a result of two meetings, all concerns of the Planning Commission have been addressed. The Planning Commission, by unanimous vote, approved the Special Approval Application for the construction of a auto body shop repair facility on the north side of Loop Road with the following conditions:

1. The required eight (8) percent interior landscaping in the proposed parking lot must be provided. The final design shall be approved by the City Planner.
2. Prior to the issuance of any permits by the City, the subject lot and the lot directly abutting this property to the east must be combined into a single lot or otherwise legally joined as a single development, subject to approval by the City Attorney.
3. A final grading and stormwater drainage plan shall be subject to approval by the City Engineering Department showing drainage calculations and incorporating retention and/or detention and erosion control during construction in accordance with the City Stormwater Drainage Control Ordinance.
4. The final construction phasing schedule shall be subject to approval by the City Engineering Department.
5. The north and west retaining walls shall be constructed either prior to or in conjunction with any backfilling of the site, the installation of stormwater detention facilities, and any stripping and stockpiling of soil on the property subject to approval by the City Engineering Department.
6. The final design of the parking layout shall be subject to approval by the City Engineering Department to allow adequate access and circulation by emergency vehicles.
7. A solid board fence, six (6) feet in height, shall be installed at the top of the retaining wall for screening purposes based on the south absorption qualities of wood versus masonry.
8. A final landscape and screening plan shall be subject to approval by the Planning Department. In particular, a climbing ground cover or ivy material shall be provided at the retaining wall.
9. A Performance Bond or other construction guarantee shall be posted by the developer for all landscaping and screening improvements required by the Zoning Ordinance including vegetation in the existing buffer zone subject to approval by the City Engineer. This bond or guarantee shall be in accordance to the Guarantee of Construction and Installation of Improvements; Inspections Section of Part Twelve, Title Four of the Code of Ordinances.
10. A final exterior lighting plan shall be subject to approval by the City Planner. Lighting in the proposed parking lot including vehicle storage area shall be limited to the minimal output necessary for security purposes, subject to approval by the Planning Department.
11. A hard surface roadway capable of providing emergency vehicle access and support at all times for emergency purposes shall be provided during construction.
12. The use of an outdoor speaker system shall be prohibited.
13. Hours of deliveries and waste collection shall be limited to the hours of 8:00 AM to 7:00 PM, Monday through Friday, and 8:00 AM to 12:00 noon on Saturday.
14. The overhead door on the north elevation shall be eliminated.
15. All overhead doors on the building shall be kept closed during the hours of operation

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except for ingress and egress of materials, vehicles, etc.

In response to many comments received by members of City Council from residents in Village South, Mayor Beals advised that the quality of water and the quality of air are regulated by the State and Federal Government through the EPA (Environmental Protection Agency).

Curt Marshall, RAPCA (Regional Air Pollution Control Agency), present at this meeting advised, that to this date, they have spoken very little about specifics of this project with the applicant; they have received no application for permit nor do they have any technical information. He is an employee of the local air pollution control agency working under the auspices of the Montgomery County Combined General Health District.

David Greer, Attorney in partner with the law firm of Bieser, Greer and Landis and representing the applicant, introduced John Voss, Dick Lang, Greg Stout and Jack Leet with Voss Chevrolet; Cara Burkhart and Brad Judge with Judge Engineering; Alex Leque, the Architect for the project; and Mike Mecum with Wilson Concrete Products, who were present at this meeting to answer questions of people in attendance. Mr. Greer addressed a letter sent to neighboring residents by Mr. Voss answering some concerns they have expressed. He pointed out that the height of the proposed building is lower than the present Voss building and ways are being explored to reduce the height of the building more while keeping it functional. The distance between the building and the back of the nearest residence is 275 feet. Mr. Greer explained a schematic of the inside of the proposed building, the location of the non operation area, and the location of other areas of operation. The non-operational area will be on the north side of the building and will occupy 34% of the inside of the building. The three paint booths to be located in the building will replace the three paint booths currently located in the present buildings; there will be no increase in the number of paint booths. The building is 300 feet long; approximately 150 feet to the south a sound proof wall will separate the non-functional area from the body shop. The body shop will eventually consist of eight frame racks. Mr. Greer advised that an estimate of 250 jobs will be performed on vehicles per month in the facility with the amount increasing to approximately 450 in three years. He pointed out that a body shop is a permitted use in B-PD zone classification. The Planning Commission, by unanimous vote, approved this application with conditions to protect the neighbors and residents. Mr. Voss has agreed with the conditions. He explained how this application meets the category of a Special Use Application for a Planning Commission decision, and how the process followed is in accordance with the Zoning Ordinance. Dust, fumes, odors, being those items not within the jurisdiction of the City of Centerville, must meet EPA requirements. Mr. Voss has engaged a specialist group involved in EPA issues in order to provide a state of the art facility. Mr. Greer explained how issues of noise, stormwater drainage, sanitary sewer problems and overall visibility have been addressed. A video was played showing the visibility of the proposed building from various areas in the neighborhood.

Kenneth Hahn, 311 South Village Drive, brought Council's attention to a petition signed by 95 percent of the Village South residents in opposition to this development. He believes that thoughts proposed are contrary to the Centerville Zoning Ordinance, the development is a threat to the buffer zone, it escalates current ground water and sanitary sewer problems in Village South, and poses a monumental visibility blight, and a long list of nuisances. This type of development is not suited to be located near a long established residential neighborhood.

David Reed, partner in the law firm of Coolidge Wall Womsley & Lombard, was present to represent the citizens in opposition of the proposed development. He expressed his concern with the following irregularities and issues he identifies in this case:

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1. The correct procedure has not been followed to protect the citizens. This should have been a Major Use Special Approval Application instead of a Planning Commission Special Approval Application, thus following a legislative rather than an administrative process.
2. Assumptions have been made by the Planning Commission which are not correct.
3. This is simply bad planning; from a City planning prospective, based upon City standards, this type of development next to a residential neighborhood is not consistent with the practices of the City of Centerville.

Mr. Reed explained, in great detail, the reasons for his concerns relative to proper procedure being followed and how he arrived at his conclusions. He believes that the Planning Commission did not have a full understanding of their duties and the extent of their discretion in this case. He proposed that City Council must decide whether this expansion is compatible and harmonious with other development in the area in order to approve this application. The question being is the use too intense for the neighboring properties? Mr. Reed stated his conclusion that this is not a permitted use; City Council has an obligation to consider environmental issues.

Ed Donovan, 360 South Village Drive, expressed concern with emissions in consideration of the closeness of Kindergarten Village and Sunday School at the Epiphany Lutheran Church. In answer to a question of Mr. Donovan, Mr. Marshall advised that an applicant, when applying for a permit from the EPA, can apply for whatever he wishes, however, it makes more sense to apply for the maximum service for which he intends.

Alisa French, 361 South Village Drive, expressed concern with the children in the neighborhood living in the area of an industrial business, and with chemicals which will be placed in dumpsters and the leakage therefrom. She believes that air pollution will expand. She asked Council to track risks which will be taken in the Village South neighborhood.

Jim Wasson, 331 North Village Drive, sees this as an industrial site application because of the size and activity which will take place in the building, he is concerned with additional contaminations coming off the hillside into the Village South area. He believes that this industrial operation belongs three to four miles from any residential area.

Robert Miller, business resident of the City of Centerville, 1936 Woodman Center Drive, developer of Village South, outlined the amenities and restrictions placed on the development in order to make it a nice place to live. He believes it to be a crime to move this commercial development onto a residential area. Mr. Miller questioned the design and safety of the retaining wall, how it will be anchored and how it will be maintained. He views this expansion as a breach of faith with the citizens affected by this development.

Jack Garner, former Montgomery County Sanitary Engineer, 85 Zengel Drive, sees the proposed development as a regional auto body shop which will lower the property values in the City of Centerville. Property values are not increasing. He suggested that the top priority of City Council, the Planning Commission and the City Administration be to protect and preserve Centerville's residential communities. Mr. Garner expressed concern with stormwater drainage, sanitary sewers and water quality issues relating to stormwater drainage in Village South. He believes that detention facilities are ½ of what they should be for the Village South area. He further cited some sanitary problems residents experienced during a recent heavy rainfall. He does not believe that all environmental issues have been addressed.

Bob Schuermann, 6420 Colechester Court, explained that significant spring rains have caused water run off from the top of the hill from Loop Road to South Village Drive, the path in

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which his property is located. He defined problems he has experienced relative to stormwater drainage and surface water as a result of improvements on the Voss property. The last round of improvements were detrimental to the Village South neighborhood.

Regis Lekan, 321 South Village Drive, understands there is a delicate balance between businesses on Loop Road and the residential neighborhood of nearly 400 homes because of topography, proximity, and purpose; businesses and residences share the same infrastructure. He believes this regional body shop will negatively impact the sanitary sewer system in the Village South neighborhood due to additional employees and additional stormwater run off. He outlined problems residents have experienced with the sanitary sewer systematic fix by Montgomery County.

Judy Watts, 241 Edgebrook Drive, outlined strong values and recreational amenities enjoyed by Village South residents. She brought attention to the fact that 95 percent of residents in Village South signed a petition in opposition to the Voss proposal. She does not want to look at high walls and factory structures. Ms. Watts asked for a safe and stable environment for City residents.

Everette Collins, 6430 Colechester Court, stated that non-productive hours of operation have been established for the Voss auto body shop by the City Planner. Productive and repair hours of operation have not been established. He asked City Council to set hours of operation for production and to be consistent with local productive hours of operation.

Rodney Miller, 320 South Village Drive, identified the current buffer strip as a critical visual barrier from the businesses on Loop Road. He showed the effect of the buffer when the trees are stripped of leaves. The wall will require a footer, and in order to put the footer in place, the buffer will be encroached. Mr. Miller asked that this wall be installed further from the buffer than 5 feet, that the boundary of the buffer be clearly marked, and that a construction fence be erected during construction of the wall.

Dean Christolear, 6230 Millbank Drive, explained City Staff's commitment to the residents of Centerville referring to action taken during the previous week relative to a sink hole in his rear yard. He expressed concern with the proposed factory and about health factors and sounds which will be emitted from this proposed use.

Bob Andrews, 6175 Millbank Drive, offered information he received relative to the estimated number of cars for an operation the size of the proposed facility, the number being 150-180 per week. He expressed concern with truck traffic removing debris and supplying new materials.

Ken Kolpitzke, 330 Edgebrook Drive, advised that the noise study done by the City of Centerville is only a start to something good, in order to do a survey of sounds, it must be done over a prolonged period of time, 7 days of 24 hours a day for the proposed facility. He expressed concern that the noise level is not known in this case.

Jay Stevens, 410 North Village Drive, believes this 48,000 square foot expansion of Voss should be considered an industrial use. Residents in Village South will pay a double penalty for this intrusion. He expressed concern with decreased property values affecting the entire community, the City of Centerville will suffer from this in the long run.

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Doug Galusha, 6381 Marshall Road, does not see businesses on Loop Road as good neighbors. He defined noises currently being experienced from these businesses at all hours of the day. He expressed concern with noise, lighting, water run off, leakage from wrecked vehicles and hours of operation. Mr. Galusha asked Council to be concerned with the quality of life for all residents.

Harper Roehm, 6341 Marshall Road, advised that if the construction of this facility is denied it is of little risk to Voss, they can locate elsewhere. If it is approved the damage to the neighborhood cannot be undone. The impact is unknown, if the neighborhood is impacted, the business will be impacted eventually.

Jerry Buening, 241 North Village Drive, recognizes the fact that this size facility is being constructed throughout the Country, however, they do not back up against residential communities. They are industrial complexes; body shop businesses are smelly, noisy and messy and will always remain that way.

Peter Flaherty, 170 South Village Drive, stated that this application is wholly inappropriate for the proposed location which is next to a residential neighborhood. It is not compatible or harmonious with Village South. The use is too intense for the proposed location. He asked Council to mitigate the adverse effects from this establishment. This is not just an issue for Village South residents, it is a City wide issue with far reaching implications. Mr. Flaherty believes that allowing this factory to be located next to a residential neighborhood is against the City's Mission Statement and the City Seal.

Mr. Greer summarized three area problems of concern with which the City has no jurisdiction. The City has pledged to address these issues with appropriate agencies. Concerns that have been expressed by the opponents have been addressed by Voss and the Planning Commission. Mr. Greer explained how these issues have been addressed. The proper procedure has been followed and conditions have been placed on the application to make sure the development has as little adverse impact as possible.

Mr. Reed explained how he believes this is not a permitted use. He believes that, no matter how state of the art the facility may be, there is a rational basis to turn the Special Use down. He outlined reasons for Council to deny this development: noise, scrap metal, drainage, visual issues, property values, etc. He pointed out that the intent of the Centerville Code is to keep harmonious and compatible uses between B-PD properties and other properties. Mr. Reed stated that from a legal standpoint, a planning standpoint, and a human standpoint the proposed use should be denied.

In answer to a question of Mr. Singer, Mr. Feverston advised that the Planning Commission opted not to place hours of operation on the business but did place limits on the delivery of vehicles and the loading of trash collection vehicles. He quoted the following condition of approval by the Planning Commission is "Hours of deliveries and waste collection shall be limited to the hours of 8:00 A.M. to 7:00 P.M., Monday through Friday, and 8:00 A.M. to 12:00 noon on Saturday".

Upon question of Mr. Cline, Mr. Feverston advised that the City does not limit the hours of operation for other dealerships on Loop Road. Mr. Farquhar pointed out that hours of operation could be restricted as long as they are reasonable, that would be a condition of approval for only this Special Use. Mr. Horn advised that the City has placed limitations on the removal of waste for just the summer months.

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In answer to a question of Mrs. Lienesch, Mr. Farquhar explained the difference between a Major Use Special Approval and a Planning Commission Special Use Approval. The Major Use Special Approval previously filed by Harrigan was for a new use, Voss already exists, being proposed by Voss is an additional building to an already approved use.

In answer to a question of Mr. Cline, Mr. Marshall (RAPCA) advised that information the City received relative to regulations regarding air pollution issues begin with 1991. RAPCA has had no prior permitting experience or complaints with Voss. He pointed out that they contract with the Ohio EPA and the US EPA to implement the air pollution control program in this part of the State and some of the responsibilities are working with industries, performing technical evaluations of applications for various permits that industries have to obtain, doing inspections, and doing enforcement when necessary. In cases such as Voss, an application for a permit to install would be required; RAPCA would do an evaluation of the application to assure that, if the permit was granted, the owner would meet all of the requirements of the rules, one of which is that the owner install or employ the best available control technology. Mr. Marshall outlined the process followed for the issuance of a permit by the Ohio EPA. RAPCA has not, in the past, issued permits for small body shops, permits have been issued for larger shops. They do regulate existing sources. Mr. Marshall advised that, in reference to the paint spray booths, the application of the coating of a vehicle would be the largest producer of the most emissions and the most concern from an air quality and health effect standpoint. Another potential source would be the grinding and sanding of a vehicle prior to the coating.

Upon question of Dr. Gresham, Jack Leet, Voss Auto Network, advised that there are many different paint processes. The paint used by Voss consists of a low VOC chemical which emits less volatile organic compound into the air. The process used today is much faster in the drying and curing of the paint. The processes to be used in the proposed facility are modern. Mr. Leet explained that the number of paint booths will remain the same, the process will be faster, the three old paint booths will be replaced with three new paint booths.

In answer to a question of Mr. Krass, Mr. Judge explained that the average height of the wall will be 9.75 feet from the existing ground level at the buffer strip. There will be a footer under the wall. Mike Mecum, Wilson Concrete Products, explained that being installed will be the keystone wall system. He explained how the wall will be constructed, the type of footer to be installed, and the backfill aggregate material.

As questioned by Mr. Krass, Mr. Greer pointed out that most leakage from wrecked vehicles happen at the accident sight. Additional leakage would take place inside the repair shop. Scrap metal will be placed in a dumpster to be hauled off as scrap to be recycled.

In answer to a question of Mr. Krass, Mr. Greer advised that the Epiphany Lutheran Church does not oppose this development. He read a letter received from Senior Pastor Reverend John Bradosky of the Epiphany Lutheran Church.

Upon question of Mrs. Lienesch, Mr. Judge advised that the removal of the fence which separated the parking for stored vehicles from general parking is being removed upon request of the Washington Township Fire Department. The deletion of this fence does not change delivery time limits. Vehicles delivered after hours will be dropped off in front of the dealership.

To clarify a question of Dr. Gresham, Mr. Horn advised that he was not aware of any complaints from the Centerville School System.



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Dr. Gresham moved that the decision of the Planning Commission be upheld concerning the Special Use Application submitted by Judge Engineering, Agent for John Voss, for the construction of an auto body repair facility on the north side of Loop Road, approximately 660 feet east of State Route 48. Mr. Krass seconded the motion. A roll call vote resulted in four ayes in favor of the motion; Mrs. Lienesch and Mr. Singer voted no.

There being no further business, the meeting was adjourned.

Approved: Sally D. Biab  
Mayor, City of Centerville

ATTEST: Wanda J. Laughlin  
Clerk of Cotncil