

RECORD OF PROCEEDINGS

Minutes of COUNCIL

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held August 19

(Continued)

20 02

The Council of the City of Centerville, County of Montgomery, State of Ohio, met on Monday, August 19, 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

City Engineer Norbert Hoffman

Public Works Director Robert James

Finance Director Mark Schlagheck

Economic Development Administrator Chris Pozzuto

Municipal Attorney Robert Farquhar

Assistant to the City Manager Jesse Lightle

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

Council Meeting - July 15, 2002.

Work Session Meetings - July 15, 2002.

- August 5, 2002.

Mr. Kingseed moved that the minutes of the foregoing meetings be approved, as distributed. Mr. Singer seconded the motion. The motion passed by unanimous vote.

Mrs. McLaughlin announced the receipt of a letter of resignation from Personnel Appeals Board member James Brunner. Mrs. Lienesch moved that the resignation of James Brunner as a member of the Personnel Appeals Board be accepted. Mr. Krass seconded the motion. The motion passed unanimously.

Mayor Beals administered the Oath of Office to Centerville Property Review Commission member James E. Brunner.

City Beautiful Commission Chairman, Linda Meily, presented plaques and Yankee Trace Gift Certificates to the following Centerville Business Pride Award winners for the month of August, 2002:

Ritter's Frozen Custard

9607 Dayton Lebanon Pike

California Closet Company

1601 Thomas Paine Parkway

Mayor Beals congratulated these two businesses and thanked them for their contribution toward beautification in the City of Centerville.

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Mayor Beals outlined procedures which are established for the conduct of Council Meetings and Public Hearings. Procedures are established by Centerville's Municipal Charter and Council Rules, commensurate with State and Federal laws and Robert's Rules of Order. Public hearings are held during regularly scheduled meetings and are advertised and publicly posted throughout the community with dates, times, and the location noted. Changes cannot be made without readvertising and reposting. Mayor Beals made reference to the Public Hearing held on June 24, 2002, at which time limitations for Public Hearings were much extended. She pointed out that with so many presenters it became necessary to reduce their time to three minutes. Knowing that there could be a large attendance at this meeting, arrangements were made so that overflow could be seated in other meeting rooms. Mayor Beals stressed the fact that had the meeting been located somewhere else, it would not have been on live television. She pointed out that the Municipal Attorney, from the beginning, informed Council that the request of Voss Chevrolet was a permitted use, approval of the proposal could be subject to conditions. Mayor Beals advised that she felt it more prudent to approve the project with conditions rather than take the chance that it could be approved without them. She pointed out that it was her intent to conduct this meeting following rules and regulations established by laws and Ordinances of the City of Centerville.

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

The Alexandersville-Bellbrook Road widening project is progressing slowly. Hopefully asphalt will be put in place on the two eastbound lanes within the next week so that construction can begin on the westbound lanes.

The new nine holes at The Golf Club at Yankee Trace opened on Thursday, August 15, 2002. Special introductory rates have been established.

Miss Gilleland outlined code violations and resolutions for the month of July, 2002, as well as the community calendar for the coming month.

Mr. Pozzuto gave a brief legislative update, outlining legislation pending at the Federal level.

Mr. Cline gave a brief update relative to the Joint Comprehensive Plan Steering Committee. On September 5, 2002, a kick-off meeting has been planned to begin at 7:00 P.M. Public participation will be encouraged as the study moves forward.

Mr. Kingseed left the meeting at this time due to a potential conflict of interest in the next agenda item. His law firm has represented Voss on labor, employment and other matters.

VOSS CHEVROLET/VOSS DODGE APPEAL TO COUNCIL

Mr. Singer explaining how John Voss, Sr. in the late seventies initiated the name "Warm and Cheerful Centerville" for the community, moved that the Appeal filed by Voss Chevrolet/Voss Dodge against a decision rendered by the Planning Commission during their meeting on May 28, 2002 to eliminate the erection of an overhead door on the north side of the new auto body shop proposed to be located on the north side of Loop Road, approximately 660

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feet east of State Route 48, be removed from the table. Dr. Gresham seconded the motion. The motion passed by unanimous vote.

Mr. Farquhar advised that the Public Hearing on this issue has been closed and may not be reopened. Mayor Beals may ask for comments from both sides; however these comments may not be in the way of evidence but merely summaries.

Pete Flaherty, 170 South Village Drive, representing the Village South neighborhood and others in Centerville, restated their opposition and concerns with the new Voss facility and the overhead door proposed for the north side of the building. He pointed out that the current Voss facility has generated noise for the past thirty years. The new facility and the overhead door will provide additional noise, odors and fumes as well as visibility. Mr. Flaherty advised that these adverse effects outweigh the advantages of the overhead door. The Fire Department has stated that the overhead door would be nice but it is not required. He pointed out that they are not opposed to the man-doors on either side of the overhead door, just the overhead door itself. Mr. Flaherty suggested that Mr. Voss be required to post a bond to guarantee that residents in Village South and children attending the Kindergarten Village will not be subjected to long term health effects. He advised that a meeting had been held to discuss an interlocking door system instead of the overhead door and this was found not to be acceptable. He pointed out that the Planning Commission on May 28, 2002 gave direction that the overhead door should not be allowed. Mr. Flaherty asked that hours of operation be established. He stressed the fact that the adverse effects of the overhead door will make this facility non-compatible with the neighborhood.

Attorney David Greer, representing Voss, pointed out that at a meeting held July 25, 2002, a compromise relative to the overhead door was presented by Voss and found to be unacceptable by Village South representatives. He stressed the fact that a Sally Port as suggested by Mr. Krass is a good idea. Mr. Greer reviewed the layout of the building and emphasized the need for the door. He advised that Voss has agreed to fourteen out of fifteen conditions placed on the new Voss auto body facility. The door is essential for the proper operation of the business. Mr. Greer explained how the double doors would operate and pointed out that sound will not be heard outside the north door. Exhibits were presented to City Council relative to the interior layout of the building, the operation of the double door system, projected sound transmissions from walls of the building, and comments from the Washington Township Fire Department relative to the overhead door.

In answer to questions of Mr. Singer, Mr. Farquhar advised that the issue of the overhead door was separated from the other conditions of approval by Appeal of Voss Chevrolet/Voss Dodge. The issue was tabled until this meeting upon motion of Council to provide both sides the opportunity to find a solution. Mr. Greer advised that the interior layout of the facility presented to Council as an exhibit at this meeting is the same as previously provided. Mr. Singer brought attention to the distance between the double doors. He pointed out that one of the reasons he moved to table the overhead door issue was that there was no evidence on the interior layout that observed the restriction against the north door, the hardship could not be determined. He also expressed concern with noise being created by traffic to the north door.

Mrs. Lienesch pointed out that Voss has done nothing to reduce adverse effects upon the neighborhood. She questioned why Appeals have been brought forth on separate issues and not all at the same time.

In answer to a question of Mrs. Lienesch, Mr. Flaherty advised that Barbara Brand has a mechanical engineer degree. She has worked in the field for many years.

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Upon question of Mr. Cline, Steve LaBraun, Custom Layout and Design, explained the layout of the building and advised that the difference between a ten foot door and a twelve foot door is minimal, some cargo trucks need that height.

In answer to a question of Dr. Gresham, Mr. Greer advised that he did not see a possibility of the body shop being moved to the north end of the building if the north door is eliminated.

Mrs. Lienesch moved that the Appeal filed by Voss Chevrolet/Voss Dodge against a decision rendered by the Planning Commission to eliminate the erection of an overhead door on the north side of the new auto body shop to be located on the north side of Loop Road be denied and the decision of the Planning Commission be upheld. Mr. Cline seconded the motion. A roll call vote resulted in six ayes in favor of the motion.

Mr. Kingseed returned to the meeting at this time.

E. G. LEWIS MAJOR USE SPECIAL APPROVAL

The Public Hearing was held concerning a Major Use Special Approval Application submitted by E. G. Lewis for the construction of a small car lot with office to rent and sell cars for Hertz Rent-A-Car. Mr. Feverston reviewed this Application and located the subject property on a map being situated on the north side of Loop Road, east of State Route 48. He identified adjacent land uses. The zoning of the property is B-PD, Business-Planned Development. Proposed is the construction of a four thousand square foot two story building on approximately 1.50 acres of land. Mr. Feverston explained the fact that the total acreage involved is 10.95 acres, however the remaining 9.45 acres consisting of grass areas and many trees is to remain undeveloped. He reviewed the topography of the land and identified the boundaries of the proposed development site. A dry detention basin will be provided to retain water run off from the site. Mr. Feverston located the building, the parking lot, the dry basin and the one hundred foot buffer on a map. There will not be a dumpster on the site. Grading of the land will only take place where necessary in order to provide for the construction of the facility. The Planning Commission, by unanimous vote, recommended approval of this Major Use Special Approval, subject to the following conditions:

1. The development shall be restricted to the approximate one and one-half (1.5) acres more or less that is the subject of this application except to permit necessary grading and stormwater drainage improvements in the area directly north and east of the primary site line. The City has agreed to accept the offer of the applicant that the remainder of such acreage shall be subject to a perpetual lease in the amount of one dollar (\$1.00) per year, granted by the owner to Centerville City Schools and/or the City of Centerville. Said lease shall be executed by all parties prior to the issuance of any building permits for this development.
2. 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. Specifically,
 - A. The developer shall submit an erosion control plan for approval by the City Engineering Department prior to each phase of construction.

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- B. A construction limit shall be delineated on the development plans and marked in the field prior to any grading or construction activity on the site. All trees and vegetation in the area west of the detention basin and outside of any grading limit shall be preserved.
- C. The detention basin(s) shall be designed in a manner that preserves existing significant trees in the vicinity.
- D. Upon completion of its grading, the slope to the north and east of the parking lot shall be seeded and mulched for stabilization.
- 3. The final design and alignment of the driveway to Loop Road shall be subject to approval by the City Engineering Department.
- 4. The final design of the parking layout shall be subject to approval by the City Engineering Department.
- 5. A hard surface roadway capable of providing emergency vehicle access and support at all times for emergency purposes shall be provided during construction.
- 6. A performance bond or other construction guarantee shall be posted by the developer for all landscaping and screening improvements required by the Zoning Ordinance subject to approval by the City Engineering Department. 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.
- 7. A final exterior lighting plan shall be subject to approval by the City Planning Department.
- 8. The use of an outdoor speaker shall be prohibited.
- 9. Deliveries and waste collection shall be limited to the hours between 8:00 A.M. and 7:00 P.M., Monday through Friday, and 8:00 A.M. to 12:00 noon on Saturday.
- 10. No sign depicted shall be approved as a part of this application. Further, the Planning Commission approved the architectural design of the proposed building. The Commission changed the base material from split face block to brick with the color, pattern, texture, or profile subject to approval by the Planning Department.

Pete Flaherty, 170 South Village Drive, outlined previous actions of Council relative to applications for the development of the subject property. He stated that they would be opposed to this development except for condition number 1. He questioned when it would be decided whether the land be leased to the Centerville City School District or the City of Centerville. Mr. Flaherty asked that the basin be designed for a fifty year storm rather than a twenty-five year storm and that consideration be given to a detention vault in order to retain some of the vegetation on the site.

Kenneth Hahn, 311 South Village Drive, brought attention to the fact that all potential disasters and nuisances on the subject property still exist which were considered in all previous proposals. He made the following suggestions:

- 1. That some type of wall or strong reinforced fencing be put in place at the construction limits of the slope.
- 2. Diligent monitoring by City Officials must be required throughout the construction process.

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3. Erosion control during construction and afterwards will require the planting of numerous trees and shrubbery as well as deep rooted grass and sodding.
4. Detailed construction plans for the entire project should be required before any work begins on the site.
5. Adequate bonding or financial assurances be required of the developer to insure the possible destruction or harm to the buffer, stormwater runoff down stream and to cover the possibility of the developer abandoning the project before completion.

Doug Galusha, 6381 Marshall Road, expressed concern with the visibility of the proposed building; he suggested that trees of a smaller diameter be left in place and additional vegetation be required. He also expressed concern with the displacement of wildlife.

Upon question of Mr. Krass, Mr. Hoffman advised that, according to preliminary calculations, this site requires a basin designed for a twenty-five year critical storm while the Voss and Acura sites required a fifty year design. This development is less intense than Voss or Acura. He pointed out that requirements for stormwater runoff control were passed by Ordinance several years ago.

As a matter of clarification for Mr. Kingseed, Mr. Hoffman explained that if the basin is designed for a twenty-five year storm, the residents downstream will have greater protection after the development than they do at the undeveloped state. Anything over the twenty-five year storm, the basin will still control runoff so that the condition will not be any worse than before.

In answer to a question of Mr. Krass, Mr. Hoffman advised that generally underground vaults are avoided. They require more maintenance, they are costly, and they are not able to be monitored.

In answer to questions of Mrs. Lienesch, Mr. Hoffman advised that this will be a dry basin with a grass bottom that will drain after each storm event. Mr. Farquhar explained that the requirement of no dumpster on the site can be a condition of approval no matter what the property is used for in the future.

Mr. Singer questioned what could be done to relocate wildlife on the property owned by E. G. Lewis. Mayor Beals explained that the Ohio Department of Natural Resources has regulations relative to the placement of wild animals. Mr. Galusha asked that something be done to preserve the wildlife in this area. Mr. Kingseed suggested that the City Manager follow up on this issue.

In answer to a question of Mrs. Lienesch, Mr. Feverston advised that the Zoning Ordinance requires that the one hundred foot buffer be left in its natural state. The developer cannot be required to provide additional landscaping. However, a condition of approval could permit the developer to place the trees that are required in the parking lot to be planted outside the primary site line. Mrs. Lienesch suggested that the developer work with residents in Village South relative to colors of the building. Mr. Feverston pointed out that the roof will be metal, this type material is permitted by the Zoning Ordinance.

E.G. Lewis, 1032 Hampshire Road, developer of this project, explained that the standard seam roof to be used is more durable than a shingled roof and is more aesthetically pleasing. He stated that he would be willing to work with the residents on the color of the roof. The colors that have been chosen for the building will blend in with the community. Mr. Lewis advised that the detention basin will be located in an area where there are no trees. He outlined how the property will be developed preserving existing trees. Mr. Lewis advised that he will be glad to put landscaping that is required in the parking lot outside the primary site line as suggested by

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Mr. Feverston.

In answer to a question of Mr. Krass, Mr. Lewis and Centerville City School Superintendent Frank DePalma explained how Attorneys are working on a lease agreement as required by condition number 1. Mr. Farquhar advised the lease agreement will have to be executed prior to the issuance of any building permit. Mr. Horn pointed out that there could be some activity on the site prior to the building permit being issued, this would be at the developer's risk.

Mr. Kingseed moved that the Major Use Special Approval Application submitted by E. G. Lewis for the construction of a small car lot with office to rent and sell cars for Hertz Rent-A-Car be approved subject to all conditions recommended by the Planning Commission and the following conditions:

1. There will not be a dumpster on the site.
2. That the basin will be a dry detention basin.
3. Mr. Lewis has permission to move the trees that are presently scheduled to be in the parking lot, relocate them to the north slope, subject to the understanding that this would not impose the requirement to buy additional trees other than the landscaping plan requires.

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

ORDINANCE NUMBER 10-02 BUILDING CODE

The Public Hearing was held concerning Ordinance Number 10-02. Mr. Horn reviewed this proposed Ordinance which makes very minor technical changes to Part Fourteen, Chapter 1420, the Building And Housing Code section of the Centerville Municipal Code. Mr. Krass sponsored Ordinance Number 10-02, An Ordinance To Amend The Centerville Municipal Code, Part Fourteen, Chapter 1420, Building And Housing Code, and moved that it be passed. Dr. Gresham seconded the motion. The motion passed by unanimous vote.

ORDINANCE NUMBER 11-02 0.128 ACRE ANNEXATION

The Public Hearing was held concerning Ordinance Number 11-02. Mr. Horn reviewed this proposed Ordinance to provide for the annexation of 0.128 acres of land to the City of Centerville. He located the subject property on a map which is part of the right-of-way for Paragon Road at the extension of Yankee Trace. Dr. Gresham sponsored Ordinance Number 11-02, An Ordinance Authorizing The Annexation Of 0.128 Acres Of Contiguous Territory Owned By The City Of Centerville And Directing The Municipal Attorney To Prosecute The Proceedings Necessary To Effect Said Annexation, and moved that it be passed. Mr. Krass seconded the motion. The motion passed unanimously.

Pete Flaherty, 170 South Village Drive, made reference to a letter sent to Council by residents in Village South relative to City Council setting hours of operation for Voss Chevrolet/Voss Dodge. Mr. Farquhar advised that according to Robert's Rules of Order an amendment can be made to a previous motion. He pointed out that this would have to be done prior to the issuance of a building permit. Mayor Beals pointed out that this would be a disadvantage for Voss in consideration of other businesses on Loop Road. Upon question of

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Mayor Beals, Mr. Farquhar advised that it would not be proper to discuss this issue without Voss representatives being present.

Mrs. Lienesch moved that hour restrictions for only the new Voss building be placed on next month's agenda. Mr. Cline seconded the motion. Mr. Cline clarified the fact that hours of operation will be placed on the agenda for the purpose of discussion. As a result of further discussion, Mrs. Lienesch moved to amend her previous motion that the meeting be held on August 26, 2002 at 8:00 P.M. Mr. Cline seconded the motion. A roll call vote resulted in six ayes in favor of the motion, Mr. Kingseed abstained.

Fritz Treiber, 1480 Ambridge Road, and Rem Merry, 7710 Glenbrier Place, were present at this meeting to bring attention to a flooding, erosion control problem and the collection of debris relative to the creek in the rear of their back yards. Mr. Merry explained that they have experienced a substantial increase in flooding which he described as being a result of the construction at the southwest corner of Alexandersville-Bellbrook Road and Clyo Road. Water is much higher than before in the creek. Mr. Treiber presented City Council with pictures evidencing his problem; he asked that something be done. Mr. Horn outlined areas flooded a few months previous which have not been flooded for the past ten years. He explained how competing interests prevent better storm water drainage control. No one wants a basin in their back yard or the removal of trees which would, many times, help residents down stream.

ORDINANCE NUMBER 13-02 BETHANY LUTHERAN BONDS

Mr. Schlagheck reviewed an Emergency Ordinance which allows the City of Centerville to execute documents which will permit Bethany Lutheran Village and Lutheran Social Services to change the financial institution that holds the Letter of Credit for Revenue Bonds issued by the City on behalf of an expansion project at Bethany Lutheran Village. Mr. Singer sponsored Ordinance Number 13-02, An Emergency Ordinance Authorizing The Execution And Delivery Of A Second Amendment To Lease Agreement, A Second Supplemental Trust Indenture, A Mortgage Modification And Restatement Agreement, And An Amended And Restated Open End Mortgage, Security Agreement, And Assignment Of Rents And Leases, All Relating To The City Of Centerville, Ohio Health Care Variable Rate Demand Revenue Bonds (Bethany Lutheran Village Continuing Care Facility Expansion Projects), Series 1988, Series 1993 And Series 1994, And Declaring An Emergency, and moved that it be passed. Mr. Kingseed seconded the motion. The motion passed by unanimous vote of City Council.

RESOLUTION NUMBER 35-02 APPROVE SOLID WASTE MANAGEMENT PLAN

Miss Lightle reviewed a proposed Resolution to approve the Solid Waste Management Plan submitted by the Montgomery County Solid Waste District. The Solid Waste Management District is required to submit this plan to each political jurisdiction in Montgomery County for adoption. Dr. Gresham sponsored Resolution Number 35-02, A Resolution Approving And Ratifying The Amended Montgomery County Solid Waste Management Plan, and moved that it be passed. Mr. Krass seconded the motion. The motion passed unanimously.

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RESOLUTION NUMBER 36-02 SOLIDARITY AGAINST HATE

Mrs. Lienesch reviewed Resolution Number 36-02, a solidarity resolution against hate. This item was discussed at a recent meeting of the Centerville-Washington Township Diversity Council brought forward by a group called Fair. Harish Trivedi, Executive Director of the India Foundation has encouraged passage of this Resolution by City Council. Mrs. Lienesch sponsored Resolution Number 36-02, A Solidarity Resolution Against Hate, and moved that it be passed. Mr. Kingseed seconded the motion. The motion passed unanimously.

RESOLUTION NUMBER 37-02 EASEMENTS TO VECTREN

Mr. Horn reviewed a proposed Resolution to grant a right of way and easements to Vectren for gas pipelines across the property previously owned by the Dayton Power and Light Company and now owned by the City of Centerville on the west side of Yankee Street across from The Golf Club at Yankee Trace. Vectren has requested a right of way and easements 20, 50 and 60 feet in width across this 26.3215 acre parcel. Mr. Singer sponsored Resolution Number 37-02, A Resolution Authorizing The City Manager To Grant A Right Of Way And Easements, On Behalf Of The City Of Centerville, To Vectren Energy Delivery Of Ohio Inc., For Their Maintenance Of Existing Gas Pipelines, and moved that it be passed. Mr. Kingseed seconded the motion. The motion passed by unanimous vote.

RESOLUTION NUMBER 38-02 SURPLUS PROPERTY

Mr. Horn reviewed proposed Resolution Number 38-02 to declare property from various City Departments which is no longer needed as surplus property. Dr. Gresham sponsored Resolution Number 38-02, A Resolution Declaring Specific Equipment No Longer Utilized By The City Of Centerville As Surplus Property And Authorizing The City Manager To Dispose Of Said Surplus Property In Accordance With The Guidelines As Stated Herein, and moved that it be passed. Mrs. Lienesch seconded the motion. The motion passed unanimously.

CITY BEAUTIFUL COMMISSION APPOINT SHUBHRA GOEL

Mrs. Lienesch moved that Shubhra Goel be appointed as a member of the City Beautiful Commission. Mr. Kingseed seconded the motion. The motion passed by unanimous vote.

CENTERVILLE ARTS COMMISSION JULIUS BREWSTER, JR.

Mr. Krass moved that Julius Brewster, Jr. be appointed as a member of the Centerville Arts Commission. Mrs. Lienesch seconded the motion. The motion passed unanimously.

CENTERVILLE ARTS COMMISSION APPOINT KARRIE R. PARRETT

Mr. Krass moved that Karrie R. Parrett be appointed as a member of the Centerville Arts Commission. Dr. Gresham seconded the motion. The motion passed by unanimous vote.

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There being no further business, the meeting was adjourned.

Approved: Sally D. Burt
Mayor

ATTEST: Maril J. McLaughlin
Clerk of Council