

RECORD OF PROCEEDINGS

Minutes of

REGULAR COUNCIL

Meeting

DAYTON LEGAL BLANK CO. FORM NO. 10148

Held October 18, 19 93

The Council of the City of Centerville, County of Montgomery, State of Ohio, met in Regular Session on Monday, October 18, 1993 at 8:00 P.M. in the Council Chambers of the Centerville Municipal Building. The Meeting was opened with an Invocation given by Reverend Thomas Kuhn, Pastor of the Church of the Incarnation and City Chaplain, and the Pledge of Allegiance to the Flag with Mayor Shirley Heintz presiding. Councilmembers and City Staff present were as follows:

Deputy-Mayor Brooks Compton
 Councilmembers Sally Beals
 James Singer
 Mark Beasley
 J. V. Stone
 C. Mark Kingseed
 Clerk of Council Marilyn McLaughlin
 City Manager Gregory Horn
 Assistant City Manager Michael Haverland
 City Planner Alan Schwab
 City Engineer Norbert Hoffman
 Municipal Attorney Robert Farquhar
 Assistant to the City Manager Judith Gilleland

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

Council Meeting - September 20, 1993.
 Council Work Session Meetings - September 20, 1993.
 - September 27, 1993.
 - October 4, 1993.
 - October 11, 1993.

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

Mayor Heintz presented a Certificate of Congratulations to Jeanne Olkosky upon reaching the top in the world of bowhunting, taking the women's triple crown title of the International Bowhunting Organization.

Mayor Heintz introduced City Beautiful Commission Chairman, Michael Battaglia, to assist in the presentation of awards to the following recipients in the City's summer City Beautiful Contest:

MARCH AND APRIL AWARD WINNERS	
Jer Sen & Mei Li Chen	5781 King Arthur Drive
Frank & Mary Wilson	7391 Hartcrest Lane
Miles & Lila Docherty	7880 Stanley Mill Drive
Nancy Rammel	157 Bradstreet Road
Jay & Lois Copp	7765 Bigger Road
Peter & Carol Greis	8064 Station House Road
Robert & Olga Mahlstedt	267 Monarch Road
Joe McEwen	9377 Stephanie Street
MAY AND JUNE AWARD WINNERS	
Dave & Kathy Zobrist	5279 Applecreek Road

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Dennis & Jean Webb	250 Glenburn Drive
Carmine & Mary D'Amico	1090 Clintshire Drive
Mike & Sandy Palmer	1973 Home Path Court
Jim & Nancy Gross	353 Silvertree Lane
Janice M. Kendig	7360 Caribou Trail
Terry & Lynn O'Brien	7550 Pelway Drive
Jean & Bob Hensley	21 Glencroft Place
John & Sally Beals	7875 Stonehouse Court
Frank & Lyn McGee	93 Carmel Court
Lee's Famous Recipe	278 North Main Street
Fried Chicken	

JULY AND AUGUST AWARD WINNERS

Dick & Elaine Flaute	5619 Royalwood Drive
Tim & Judy Lange	639 Chipplegate Drive
Helen Lambert	759 Kentshire Drive
Jerry & Judy Schriml	6547 Atterbury Court
Fritz & Sonja Treiber	1480 Ambridge Road
Pete & Priscilla Schwalm	7561 John Elwood Drive
Nancy & Roger Carlsen	137 Lakeview Drive
Evelyn Mahanes	8020 Brainard Woods Drive
David & Sandy Sapphire	8231 Rhine Way
Ron & Vicki Kuhn	300 Shawnee Trail
Joe and Judy Koenig	411 Blackstone Drive
Ladd Industrial Sales	144 Westpark Road

Mr. Battaglia introduced other City Beautiful Commission members present at this meeting and outlined the judging of competition.

Following a recess in this meeting to provide for City Council to express appreciation to the award winners, the meeting reconvened into general session.

Mrs. McLaughlin announced the receipt of a letter of resignation from Centerville Arts Commission Member Betty Lou Townley. Mr. Beasley moved that the resignation of Mrs. Townley be accepted, with regret. Mr. Singer seconded the motion. The motion passed by unanimous vote.

Mrs. McLaughlin read correspondence received from Mr. A. J. Wagner, Montgomery County Auditor in reference to the 1993 Triennial Reappraisal for the County. A conference to present an overview of the reappraisal process has been scheduled for Tuesday, October 26, 1993 at 3:30 PM at Sinclair Community College.

Mayor Heintz announced the issuance of the following Proclamations:

Fire Prevention Month - October, 1993.

National Alzheimer's Disease Month - November, 1993.

National Unfunded Mandates Day - October 27, 1993.

Red Ribbon Week - October 23 through October 31, 1993.

Mayor Heintz identified the goal of the Red Ribbon Celebration to present a unified and visible commitment toward the creation of a Drug-Free America.

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

The construction of the Yankee Trace Golf Course is progressing well. Nearly fifteen holes have been seeded and sodded around greens and tees; weather permitting, the other three holes will be completed by the end of the current week.

A seminar has been scheduled for Wednesday, October 20, 1993 for public officials throughout the Miami Valley to attend regarding the 1992 Cable TV Act and FCC Regulations. This seminar will begin at 6:30 PM at the NCR Sugar Camp, Main Dining Room.

Work is nearly 80% complete with the construction of a drainage basin at the Activity Center, a part of the City's on-going stormwater drainage program.

Construction continues on the extension of Clyo Road to Wilmington Pike. This roadway will perhaps be open for public use during the first week in November depending upon progress being made on Wilmington Pike.

Receipt of the City's Main Street Study is anticipated by the end of October.

Fall leaf collection is in full operation. Schedules have been published in the Town Crier and the Centerville-Bellbrook Times.

A Petition has been filed with the Board of County Commissioners of Montgomery County for the annexation of 66.74 acres of land owned by the Yankee Development Group, from Washington Township to the City of Centerville.

The Centerville Police Department has stepped up speed limit enforcement on Main Street in the City of Centerville at certain hours of the day.

Mr. Singer expressed his satisfaction with the stormwater detention work in the Activity Center, emphasizing the fact that improving the stormwater drainage control in the northwest portion of the City of Centerville is one of the City's primary objectives in 1993. Upon question of Mr. Singer, Mr. Horn identified some problems incurred with Washington Township in the transportation of dirt from the construction site at Incarnation Church to the Activity Center. Problems have caused additional costs to the City of Centerville.

Mayor Heintz announced Beggars Night in the City of Centerville, Saturday, October 30, 1993 between 6:00 and 8:00 PM.

CINCINNATI SMSA LIMITED PARTNERSHIP AMERITECH CONDITIONAL USE SPECIAL APPROVAL

The Public Hearing was held concerning a Conditional Use Special Approval Application submitted by Cincinnati SMSA Limited Partnership, Ameritech Mobile Communications, Inc., to construct a cellular telephone facility on property located at 85 Loop

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Road, property owned by Bob Ross Buick, Inc. Mr. Schwab reviewed this application for a 150 foot self supporting monopole with a 4 foot antenna platform for a total of 154 feet, together with an unmanned electronic telephone transmission equipment shelter with approximate dimensions of 12 feet by 26 feet by 10 feet high. The Zoning Ordinance for the City of Centerville permits a maximum height of 110 feet. Originally the request included a setback variance for the antenna and equipment shelter. During the Planning Commission meeting the application was amended by the applicant to provide for a separation and relocation of the tower from the transmission equipment shelter, thus adhering to setback requirements for both structures. Mr. Schwab pointed out the fact that the only consideration now before City Council is the maximum height of the tower. Mr. Schwab located the subject property on a map and identified adjacent zone classifications and land uses. He pointed out the proposed location for the tower in the parking lot for Bob Ross Buick and the equipment shelter in the southeast portion of the Bob Ross property. These locations now satisfy setback requirements. The motion during the Planning Commission meeting to recommend to City Council approval of the requested variance for a tower 154 feet in height conditioned upon the location of the tower being setback 169 feet from the south and east property lines was denied by a vote of 3-2.

Mr. Jim Leahy, representing Ameritech Mobile Communications, Inc., gave a brief history of Ameritech and advised that a hole in coverage exists in this area. They have attempted to locate this tower within their grid pattern, in a commercial area which is far removed from residential uses. The height proposed is necessary in order for the cellular system to work. Mr. Leahy advised that there are 1550 subscribers or 16% of the households using the system in Centerville. However, this does not include those Centerville residents that use a cellular phone for their occupation in other parts of the Miami Valley. Nationally, use of a cellular phone has increased by 29% within a one year period. Mr. Leahy explained the many benefits the cellular system provides to a community.

Mr. Tim Boizell, design engineer for Ameritech, explained the fact that the proposed tower height is necessary in order for the cell site to function as an integral unit in the cellular telephone system. A tower lower in height would require the location of another tower somewhere south in the Centerville area. Upon question of Mrs. Beals, Mr. Boizell advised that there are currently and will only be two licensed cellular competitors in the Centerville area. They must meet FCC requirements relative to interferences to other carriers and to residential uses.

Mr. Singer, Mr. Compton and Mr. Kingseed, attempting to provide the best possible method of communications to Centerville residents and recognizing the safety which the cellular system provides to residents, offered their support for passage of this application.

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Upon question of Mr. Stone, Mr. Leahy clarified the fact that the tower is available for use by the Centerville Police Department and the Washington Township Fire Department at no cost to the City or Township. Mr. Stone indicated his support for this proposal based upon the public service which the system will provide residents as well as the police and fire departments.

As suggested by Mrs. Beals, Mr. Leahy agreed to surround the transmission equipment shelter with a 7 foot high chain link fence and staggered shrubbery.

Upon question of Mayor Heintz, Mr. Leahy clarified the fact that the tower will be located 170 feet from all four lot lines. The only variance now included in this application is the height of the tower. The location of the transmission equipment shelter meets setback requirements contained in the Centerville Zoning Ordinance.

Mr. Singer moved that the recommendation of the Planning Commission to deny the Conditional Use Special Approval Application submitted by Cincinnati SMSA Limited Partnership, Ameritech Mobile Communications, Inc., be overturned, and that this amended application be approved subject to the following conditions:

1. that the tower be available for use by the Centerville Police Department and the Washington Township Fire Department at no cost to the City or the Fire Department.

2. that the transmission equipment shelter be surrounded by a 7 foot high chain link fence and that the fence be surrounded by staggered shrubbery with an initial height of 7 feet.

Mr. Beasley seconded the motion. A roll call vote resulted in seven ayes in favor of the motion.

Mr. Stone and Mr. Kingseed left the meeting at this time due to a potential conflict of interest in the next agenda item.

CENTERVILLE UNITED METHODIST CHURCH CONCLUSION OF FACT

Mr. Farquhar advised that Judge Patrick J. Foley, while overruling a motion to dismiss the case between the Centerville United Methodist Church and the City of Centerville, allowed the City of Centerville to file Conclusions of Fact with respect to the appeal by the Centerville United Methodist Church from the decision of the Centerville Planning Commission of November 10, 1992 denying the application of the Centerville United Methodist Church to demolish the historical structure at 59 East Franklin Street, Centerville, Ohio. Upon question of Mr. Singer, Mr. Farquhar explained the fact that the Motion to Dismiss was filed in the Court of Common Pleas on behalf of the City of Centerville to dismiss the appeal filed by the Centerville United Methodist Church on the grounds that the Church failed to follow the local rule and file a brief within the period of time set forth in the local rule. Judge Foley, assuming some confusion in the status of the local rule at the time, elected to overrule the motion.

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Mrs. Beals moved that the following Conclusions of Fact be approved and incorporated into the minutes of this meeting. Mr. Beasley seconded the motion. The motion passed by unanimous vote:

1. The Centerville United Methodist Church purchased the property at 59 East Franklin Street, Centerville, Ohio in December, 1970.

2. In 1971 the City of Centerville adopted the Architectural Preservation Ordinance which, among other things, prohibited the demolition of structures within the Architectural Preservation District unless approval was obtained for same from the Board of Architectural Review and the Planning Commission.

3. On November 26, 1985 the Centerville United Methodist Church filed an application with the Board of Architectural Review to demolish the structure at 59 East Franklin Street, Centerville, Ohio.

4. Pursuant to the application of the Centerville United Methodist Church for demolition, a study was made by the Centerville Planning Commission and a report was rendered on December 3, 1985. That report reached the following conclusions:

- (A) The Planning staff concluded that the existing building "is not a hazard to the public health or safety. Restoration or renovation of this building is feasible."
- (B) "The building is not a deterrent to a major community improvement."
- (C) The applicant did not submit any data to substantiate that the rehabilitation of the building is not economically feasible; however, a lay inspection of the building would indicate that the rehabilitation of the building would be economically feasible.
- (D) "The building is not a detriment to the community."

5. As part of the original application, the City of Centerville engaged the Landmarks Renaissance Corporation to undertake a historic, structural and use evaluation of three properties for which demolition permission was requested including the property at 59 East Franklin Street. Said corporation rendered the following evaluation:

"a. It is our opinion that the removal of the buildings at 57 and 59 East Franklin Street would have a very serious negative effect on the historic character of East Franklin Street. The void created on the north side of the street along with the mass of the church buildings will destroy the balance of the vista as approached from either east or west.

b. It is further our opinion that to approve this demolition will very possibly make the further regulations of the Architectural Preservation District unenforceable. The courts require evenhandedness in the application of design ordinances. To give a group (congregation) privileges that would be denied individual property owners is to negate the effect of the ordinance. The first property owner that wants to challenge the ordinance, particularly on East Franklin Street, will in our opinion have a very strong case."

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6. On August 6, 1992 the Centerville United Methodist Church again filed application for demolition of the property at 59 East Franklin Street, Centerville, Ohio.

7. The City of Centerville again commissioned a feasibility study of the property sought to be demolished and engaged Landmarks Architecture for that project.

8. On August 28, 1992 Landmarks Architecture rendered its report to the City of Centerville. The following conclusions were reached.

"1. The Historic Jacob McCracken House at 59 East Franklin Street is structurally sound and is not an 'extreme safety hazard'. The carriage House and connecting substandard porch to the north of the two story frame house, however, should either be renovated or demolished within the next 12 months.

2. The Historic Jacob McCracken House two story wood frame home can be economically rehabilitated either as a residence or a business use and it can be demonstrated to be economically feasible for either function.

3. The economic benefit to the property owner for the demolition of the building is a diminution of value of its own property. The equities inherent in a building renovation established as part of this report show conclusively that demolition of the Historic Jacob McCracken Homestead would significantly reduce the current equity value of the property. The most significant impact to the property owner, however, would be:

A. Demolition of the building would provide additional parking or expansion for the Church building.

B. The Church would no longer have maintenance requirements for the building.

C. Increased visibility for the Church structure would be enhanced.

4. The impact of the deferred maintenance or 'demolition by neglect' of the structure has done little to change the conclusions of the 1985 reports and conclusions of the various parties involved. An additional seven years has not significantly deteriorated the two story residence building. While certain maintenance functions need to be attended to, the building is sound and should be retained.

5. It is evident from this investigation that the primary reason for demolition of this structure is geographical and not substantially associated with the actual condition of the building itself. This house constructed on a different lot with a different location would be a prime candidate for renovation as a residential or office use. It is the conclusion of this report that the only reason for the demolition of the Historic Jacob McCracken Homestead is one of location, not of economic feasibility.

Given the cost of demolition or the cost to renovate the structure for either residential or business uses, there is no good economic reason for the buildings' demolition."

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9. Since the control of maintenance has been with the applicant since its purchase of the building in 1970, any argument that its present condition dictates demolition is without merit.

10. The property located at 59 East Franklin Street, Centerville, Ohio commonly known as the Jacob McCracken Homestead is historically significant based upon the findings of two separate architectural restoration firms and based upon the conclusion of the Centerville Historical Society as contained in its letter of September 15, 1992 which stated, inter alia: "...the McCracken House is an integral part of the East Franklin historical streetscape. Its removal would adversely affect the architectural ambience of the area and would tend to create a perception of sterility."

Mr. Stone and Mr. Kingseed returned to the meeting at this time.

RESOLUTION NUMBER 69-93 RIDGEWAY/HAMPTON STORM SEWER

Mr. Horn reviewed the following bids received for the Ridgeway/Hampton Relief Storm Sewer Project in the City of Centerville:

Dyno Construction Dayton, Ohio	\$249,527.90
Demney Construction, Inc. Springfield, Ohio	\$275,001.90
Joel Lehmkuhl Excavating Bellbrook, Ohio	\$282,688.65
R. E. Holland Enon, Ohio	\$294,925.40
Excel Contracting, Inc. Enon, Ohio	\$299,039.00
Bronco Excavating, Inc. Fairfield, Ohio	\$304,205.00
TdM Construction Centerville, Ohio	\$305,949.00
Mainline Road & Bridge Bellbrook, Ohio	\$314,575.00
SK Construction Company Middletown, Ohio	\$343,390.00
Sunesis Construction Company Camp Dennison, Ohio	\$346,538.00

Mr. Horn recommended acceptance of the bid submitted by Dyno Construction Company in the amount of \$249,527.90 and that he be authorized to spend up to a total of \$265,000.00 for additional work that may be deemed necessary through the course of the project. He advised that the engineer's cost estimate for this improvement was \$300,000.00. Mr. Horn identified this as a two part storm sewer project - storm sewers improved in the Terrace Villa Plat to collect and carry water into a drainage basin currently under construction at the Activity Center. Work will begin in the Terrace Villa Plat almost immediately and will continue into the winter months with most of the work being

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performed in the right-of-way. Touch up work will take place in the spring of 1994.

Mayor Heintz thanked Mr. Singer for Chairing the Stormwater Drainage Task Force and all members of the Task Force and City Staff for the continuation of drainage improvements in the City of Centerville.

Mrs. Beals sponsored Resolution Number 69-93, A Resolution Accepting The Bid Of The Dyno Construction Company For The Ridgeway/Hampton Relief Storm Sewer Project In The City Of Centerville And To Authorize The City Manager To Enter Into A Contract In Connection Therewith, and moved that it be passed. Mr. Stone seconded the motion. The motion passed unanimously.

CENTERVILLE HISTORICAL COMMISSION APPOINT GASTINEAU & NELSON

Mr. Beasley moved that Susan Printz Gastineau and Roger J. Nelson be appointed as members of the Centerville Historical Commission to fill the unexpired terms of James Teske and John Moraites. Mr. Compton seconded the motion. The motion passed by unanimous vote.

CITY BEAUTIFUL COMMISSION APPOINT LANEVE & LABBE

Mr. Compton moved that Joseph M. Laneve and Janet E. Labbe be appointed as members of the City Beautiful Commission, each for a term of three years. Mrs. Beals seconded the motion. The motion passed unanimously.

CENTERVILLE ARTS COMMISSION APPOINT FITZSIMMONS

Mr. Kingseed moved that Olga Fitzsimmons be appointed as a member of the Centerville Arts Commission to fill the unexpired term of John McGee. Mr. Compton seconded the motion. The motion passed by unanimous vote of City Council.

NESTLE CREEK SECTIONS ONE THROUGH FIVE BOND RELEASE

Mr. Horn reviewed a recommendation of the City Engineer that the \$2,000.00 bond posted by John G. Black Enterprises, Inc. for sidewalk construction in Nestle Creek, Sections One through Five be released. Mr. Stone moved that the \$2,000.00 sidewalk bond posted on Nestle Creek, Sections One through Five be released. Mr. Compton seconded the motion. The motion passed by unanimous vote.

RESOLUTION NUMBER 70-93 I/M POLICY

Mr. Horn outlined the Dayton/Springfield I/M Policy Committee's request to implement enhanced vehicle inspection and maintenance. The Ohio Legislature recently passed Senate Bill 18 which provides for a local opt-in process to implement inspection and maintenance programs. The Counties of Clark, Greene and Montgomery are considered as moderate nonattainment areas for ozone. The Clark County-Springfield Transportation Coordinating

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Committee and the Miami Valley Regional Planning Commission Transportation Committee have recommended the enhanced program for said Counties which allows for emission testing every two years with more stringent testing. Mr. Horn outlined the method of testing vehicles under the enhanced inspection and maintenance program. Mr. Horn advised that in order for the enhanced program as recommended by the Transportation Committees to move forward, there must be represented at least 60% participation of the total population in the nonattainment Counties and three out of four County Commissioners in the nonattainment Counties. If the enhanced program is approved, inspections will begin mid 1995 and will be done every two years perhaps during vehicle registration. Mrs. Beals and Mayor Heintz pointed out that this program has been generated at the Federal level and regions have no choice in the matter, a program must be established, approved and implemented. Mr. Hoffman explained the fact that the Clean Air Act Amendments of 1990 require that any nonattainment area must develop a Compliance Plan which commits to the implementation of emission control strategies to reduce volatile organic compound emissions by at least 15% by the year 1996. Mr. Beasley sponsored Resolution Number 70-93, A Resolution To Approve The Dayton/Springfield I/M Policy Committee's Request To Implement Enhanced Inspection And Maintenance, and moved that it be passed. Mr. Kingseed seconded the motion. The motion passed unanimously.

RESOLUTION NUMBER 71-93 PURCHASE TRACTOR BY JOINT CONTRACT

Mr. Horn identified the need for the City of Centerville to purchase some equipment to mow certain areas of the Yankee Trace Golf Course. He recommended that the State of Ohio Purchasing System adopted by Council in 1988 be utilized for the purchase of one John Deere Tractor. Mr. Singer sponsored Resolution Number 71-93, A Resolution Authorizing The City Manager To Participate In A State Contract Executed Between The Department Of Administrative Services, Office Of State Purchasing And Xenia Power Equipment, For The City Of Centerville's Purchase of One John Deere 5300 Tractor 2WD, and moved that it be passed. Mr. Stone seconded the motion. The motion passed by unanimous vote.

RESOLUTION NUMBER 72-93 CLYO ROAD & ALEX BELL ROAD IMPROVEMENTS

Mr. Horn reviewed a proposed Resolution to reaffirm the City of Centerville's request for Federal funds for the reconstruction and widening of Alexandersville-Bellbrook Road from Loop Road to Wilmington Pike and the reconstruction and repair of Clyo Road from Alexandersville-Bellbrook Road to Bigger Road. These projects have not yet been acted upon, this is the City's attempt to keep them current on the Federal Fund Eligibility List. The Miami Valley Regional Planning Commission has been designated as the Metropolitan Planning Organization for our area and have review rights over projects in the area. Mr. Singer sponsored Resolution Number 72-93, A Resolution Reaffirming The City Of Centerville's Request That Federal-Aid Highway Funds Be Programmed For The Reconstruction And Widening Of

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Alexandersville-Bellbrook Road From Loop Road Eastward To
Wilmington Pike; And For The Reconstruction And Repair Of Clys
Road From Alexandersville-Bellbrook Road To Bigger Road, and
moved that it be passed. Mr. Beasley seconded the motion. The
motion passed unanimously.

There being no further business, the meeting was adjourned.

Approved: Shirley F. Hermitz
Mayer

ATTEST:

Maureen McLaughlin
Clerk of Council