

# RECORD OF PROCEEDINGS

277

Minutes of

REGULAR COUNCIL

Meeting

DAYTON LEGAL BLANK CO. 10144

Held September 17, 19 90

The Council of the City of Centerville, County of Montgomery, State of Ohio, met in Regular Session on Monday, September 17, 1990 at 8:00 P.M. in the Council Chambers of the Centerville Municipal Building. The Meeting was opened with an Invocation given by Reverend Preston Dawes, 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  
C. Mark Kingseed  
Mark Beasley  
J. V. Stone  
Clerk of Council Marilyn McLaughlin  
City Manager Darryl Kenning  
City Planner Alan Schwab  
Municipal Attorney Robert Farquhar  
Administrative Assistant Michael Haverland  
Administrative Assistant Judith Gilleland

The Minutes of the following Meetings had been distributed prior to this Meeting:

Council Meeting - August 20, 1990.  
Council Work Session Meetings - August 20, 1990.  
August 27, 1990.  
September 10, 1990.

Mr. Compton moved that the Minutes of the foregoing Meetings be approved as distributed. Mrs. Beals seconded the motion. The motion passed by unanimous vote.

Mr. Jack Langreck, Teacher in the Centerville City School System and a resident of Centerville, outlined his trip to West Germany this summer. He presented to the City a piece of the Berlin wall which he personally obtained during his trip.

Mayor Heintz outlined the City's stable financial position to construct a proposed golf course for Centerville. The golf course will be surrounded by a tract of homesites. An outline of the step by step process will be included in the October issue of the Town Crier.

Mayor Heintz advised that October 20 - 28, 1990 will be designated as Red Ribbon Week throughout Montgomery County. She encouraged all residents to participate in this anti-drug program.

Mayor Heintz advised that Councilmember Sally Beals recently spoke on the City's Recycling Program at the Ohio Municipal League Conference.

Held September 17, 1990 continued 19

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

Roadway improvement to Clyo Road from Centerville Station Road to Alexandersville-Bellbrook Road has been approved as a State, Federal and local project. Work will begin on September 24, 1990 and is estimated to take approximately six weeks to complete. The total cost of the project is approximately \$240,000.00, the City's share being \$60,000.00. Traffic will be maintained throughout the improvement project.

Final plans for the reconstruction of Whipp Road from State Route 48 to the Corporation Line are now ready for approval. This is also a State, Federal and local project. Acquisition of property for right-of-way purposes could begin this year.

Mr. Kenning reported on the Planning Commission Meeting held on July 31, 1990.

Mayor Heintz left the Meeting at this time due to a potential conflict of interest in the next Agenda item. Councilmember Brooks Compton presided.

#### MONTGOMERY COUNTY COMMISSIONERS APPEAL TO COUNCIL

The Public Hearing was held concerning an Appeal filed by the Board of County Commissioners, Montgomery County, against decisions rendered by the Planning Commission during their Meeting on July 31, 1990 denying a Variance Application and a Planning Commission Special Approval Application to permit the construction of a two million gallon elevated water storage tank on property located at the dead end of Pleasant Hill Drive, Lakeview Drive and North Johanna Drive.

Mr. Schwab outlined the variances requested as follows: property is 1.627 acres less than the required 5 acres, the side yard set back is 25 feet less than the required 40 feet and the facility has access from a residential street rather than a major roadway. He located this R-1d, Single Family Residential, zoned land on a map and identified the location of this second tower to the north and adjacent to the existing tower. The proposed tower will be designed almost identical to the existing tower. Mr. Schwab outlined adjacent land uses. The Planning Commission, believing that the standards for granting a Variance were not met, denied the Variance Application by a 5-1 vote. The Planning Commission Special Approval Application was denied by a 4-2 vote based upon the denial of the Variance Application.

Mr. John Garner, Director of Sanitary Engineering Montgomery County, resident at 85 Zengel Drive, brought Council's attention to four exhibits distributed for their consideration: Memorandum of Law, United States topo map of the area involved, alternate sites considered by Montgomery County, and a comparison of proposed tank heights on alternate sites. He brought attention to a "balancing test" which the County believes should be



# RECORD OF PROCEEDINGS

279

Minutes of

Meeting

DAYTON LEGAL BLANK CO. 10134

Held September 17, 1990 continued 19

considered in this case: (1) the essential nature of the government-owned facility, (2) the impact of the facility upon surrounding property, and (3) the alternative locations available for the facility. Mr. Garner outlined the ownership of the current water system during past years. The present tank is on the highest ground in Centerville, it is near the end of the water system and is near the high water demand area. He explained the fact that the second tank is needed to meet the current water demand in the south suburbs. Mr. Garner advised that consulting engineers prepared a Master Plan completed in 1988 which recommended that storage be provided in a volume equal to the average day demand which was thirteen million gallons per day. Today, at peak periods, the water demand exceeds twenty millions gallons per day.

Mrs. Beals left the Meeting at this time due to a potential conflict of interest.

Mr. Garner explained the fact that 95 percent of the residential development took place after the current tank was constructed; if property values decreased, the purchasers benefitted at that time. He located alternate sites which Montgomery County has considered, sites on lower ground level, thus causing the tank to be constructed at a greater height and at an escalated cost.

Mr. Roger Nelson, Woolpert Consultants, Inc., presented computer generated photographs which visually located the proposed tank with the existing tank and the appearance of tanks at alternate sites.

Mr. Garner advised that Montgomery County believes that the existing tank is in a good storage tank location, there is a need for an additional storage tank, the proposed location for the second tank is most appropriate from a technical hydraulic viewpoint and an economical viewpoint and, location at another site at a greater height will impact neighboring residential areas as well.

Upon question of Mr. Singer, Mr. Garner advised that construction on the second tank could begin during the spring or summer of 1991 and take from six months to one year to complete. Construction time restrictions would not impact costs and would be a reasonable, enforceable condition.

Mr. Compton questioned whether any studies have been completed to determine the impact of this tank upon adjacent residences. Mr. Garner advised that Montgomery County believes the impact to be minimal due to the fact that one tank already exists.

Mr. Beasley pointed out the fact that no residential area is adjacent to the alternative site east of the Centerville High School. This site would cost the County slightly more than \$34.00 per resident in Centerville.



## RECORD OF PROCEEDINGS

280

Minutes of

Meeting

Held September 17, 1990 continued

19

Upon question of Mr. Stone, Mr. Nelson advised that the tank would be made of steel, welded together, materials brought upon the property by way of North Johanna Drive, Lakeview Drive or across School property. The tank would be brought upon the site in pieces. A crew of five to ten workmen would be involved during the construction period. Truck traffic would include the hauling of dirt, cement, steel and a crane would be involved in the finishing process.

Upon concern of Mr. Beasley, Mr. Garner advised that Montgomery County would adhere to all requirements of the City of Centerville relative to the maintenance of City streets during the construction period.

Mr. Richard Rhodus, 180 North Johanna Drive, expressed concern with potential breakdown of the water main near the tanks. He identified an unpleasant experience when the existing water tank was painted. Mr. Greg Marrow, Assistant, Sanitary Engineering Department, Montgomery County, explained how breakdowns would be controlled through inter-connections; each tank having its own individual feed.

Mr. Edward Novak, 120 North Johanna Drive, cited technical, environmental and aesthetic problems with Montgomery County's proposal. He brought attention to the topo map upon which he located another high spot to the south near Nutt Road where the majority of residential development is currently taking place. He expressed concern for the safety of children walking to school during construction traffic. This proposal destroys a nature area which is now being used by the school children for nature studies. Mr. Novak believes that a second tank will be more detrimental to property values than the existing tank. Mr. Garner advised that Montgomery County proposes to construct a two million gallon storage tank on the south location defined by Mr. Novak. The County anticipates constructing a second tank at this location as well as other tanks to satisfy needs in the future.

Mrs. Mary Cook, 417 East Franklin Street, stated opposition to a second tank being located at this location. She defined an unpleasant experience during construction of the first tank.

Mr. Paul Labbe, 120 Woodfield Place, accepts the need for additional water source, but questions the proposed location in consideration of other proposed sites and the City's zoning regulations. He is familiar with the maintenance of the existing tank and the noise it generates. He believes that Montgomery County should be more sensitive to the zoning requirements of the City of Centerville.

Mr. John Zengel, 226 Pleasant Hill Drive, proposed other alternatives be considered for the location of this tank rather than a second tank at this location. Tanks further to the south where the demand is increasing would provide relief for the location in question. He suggested that a tank of a different type and capacity be considered to replace the current tank, thus satisfying the need for a second tank.

Mrs. Clee Rhodus, 180 North Johanna Drive, questioned maintenance required for water storage tanks. Mr. Garner identified grounds, shrubbery, and fence maintenance. The tank is maintained by experts when deemed necessary.



DAYTON LEGAL BLANK CO. 10144

Held September 17, 1990 continued

19

Mr. Rhodus and Mrs. Cook explained the undesirable condition in the neighborhood when the current tank was scraped and painted.

Mr. Beasley stated his opposition to this proposal. He is opposed to the three variances requested, the application does not meet the Centerville zoning standards for a water tower. He believes the Centerville High School site is a better location, it is near business and industry and not immediately adjacent to residential. He is concerned for the continuance of habitat for wild life in the proposed location.

Mr. Kingseed expressed concern with the impact a second tower would have on the surrounding neighborhood. He is convinced that the construction of a second tank would be devastating to the neighborhood. Alternatives are available and should be considered.

Mr. Singer expressed concern with the additional cost factor of locating this tank in another location.

Mr. Stone stated his concern with disrupting an established neighborhood and truck traffic during the construction of a second tank in this location when other valid alternatives can be utilized.

Mr. Kingseed moved that the decision rendered by the Planning Commission denying a Variance Application and Planning Commission Special Approval Application to construct a second water storage tank at the dead end of Pleasant Hill Drive, Lakeview Drive and North Johanna Drive be reaffirmed and this Appeal be denied. Mr. Beasley seconded the motion. A roll call vote resulted in four ayes in favor of the motion, Mr. Singer voted no.

Mayor Heintz and Mrs. Beals returned to the Meeting at this time.

#### REID AND JOY PATTERSON APPEAL TO COUNCIL

The Public Hearing was held concerning an Appeal filed by Reid E. and Joy D. Patterson against a decision rendered by the Planning Commission during their Meeting on July 31, 1990 denying a Variance Application to permit an existing brick wall to remain in the front yard at 154 East Franklin Street.

Mr. Schwab located the R-1d, Single Family Residential zoned parcel on a map. He explained the fact that prior to the adoption of the current Zoning Ordinance a brick wall was legally constructed in the front yard of this property. Recently, an additional section of this fence was constructed along the opposite side of the driveway which now does not conform to the requirements of the Zoning Ordinance, thus the Applicant filed an Application for Variance to permit the fence to remain. The vote in Planning Commission ended in a tie vote to approve the Variance Application, thus the motion did not pass.

Mr. Samuel McCray, Attorney representing the Applicant, explained the fact that the fence in question is a continuance of the fence previously erected and which conformed to zoning requirements before the Zoning Ordinance was revised in 1986.



Held September 17, 1990 continued 19    

Mrs. Beals moved that the Appeal filed by Reid E. and Joy D. Patterson to permit an existing brick wall to remain in the front yard at 154 East Franklin Street be approved, thus reaffirming the motion made by the Planning Commission. Mr. Compton seconded the motion. A roll call vote resulted in seven ayes in favor of the motion.

PHIPPS/GERHARDT APPEAL TO COUNCIL

The Public Hearing was held concerning the Appeal filed by Warren Jay Phipps against a decision of the Board of Architectural Review rendered during their Meeting on July 17, 1990 and the Planning Commission during their Meeting on August 14, 1990, denying an Application for Variance to permit new B. P. Oil Company signage to comply with Company policy.

Mr. Schwab located the subject property on a map, being 140 North Main Street and owned by Don Gerhardt. The property is located in the Architectural Preservation District. Signage requested is already in place. He advised that through previous years this property has accumulated a number of legal nonconforming signs which far exceed the standards permitted by the Zoning Ordinance. The Board of Architectural Review, recognizing no unique circumstance or characteristics in this case to warrant the granting of a Variance, denied the Application by a vote of 5-0. The Planning Commission, finding no grounds for additional signage at this location, upheld the decision of the Board of Architectural Review by a 4-0 vote.

Mr. Warren Phipps, Buckeye Oil Equipment Company, introduced Mr. Edward Jaycox, B. P. Oil Company, who pointed out the fact that the "customer service" sign on the front of the building has been removed. B. P. Oil would like to keep the "Sohio" signs on the spreaders above the pumps, however they could be located in a diferent location on the spreaders.

Upon question of Mr. Beasley, Mr. Jaycox advised that current signage on the site is necessary for proper identification.

As questioned by Mayor Heintz, Mr. Schwab advised that the Planning Commission and the Board of Architectural Review were sympathetic to the desire to change signage to conform to Company standards, but were not willing to permit additional signage on the subject property.

Following discussion relative to permitting signage on this property meeting Zoning Ordinance requirements, Mr. Phipps and Mr. Jaycox agreed to work with the Planning Department in order to develop signage to meet Company standards and the City's Zoning Ordinance.

Mrs. Beals moved that the decision rendered by the Board of Architectural Review and the Planning Commission denying the Variance Application submitted by Warren Phipps for additional signage at 140 North Main Street to meet Company policy, be upheld and the Appeal be denied. Mr. Kingseed seconded the motion. A roll call vote resulted in seven ayes in favor of the motion.



Held September 17, 1990 continued 19

## DANIEL DOEPKE/MILL END/ORIENT EXPRESS APPEAL TO COUNCIL

The Public Hearing was held concerning an Appeal filed by Daniel C. Doepke against a decision rendered by the Planning Commission during their Meeting on August 14, 1990 for property located at 832 South Main Street, more particularly known as Mill End and Orient Express.

Mr. Schwab located the subject property on a map and identified the Variance requested to permit lot widths less than required by the Zoning Ordinance and lot areas less than the required 20,000 square feet per lot. The zoning of the property is B-2, General Business. The Applicant has requested a split of the lot to allow the restaurant to be sold as a separate parcel. Each of the two businesses share a common driveway between the two buildings; if the lot is split, the maintenance of a cross easement will be necessary. The Planning Commission, recognizing no unique situation or hardship in this case, denied the Variance Application by a vote of 5-0.

Mr. Daniel Doepke, owner of the property, advised that both parties are willing to give and maintain cross easements if this Variance is granted, this proposal will not adversely affect the neighboring properties.

Mr. Compton moved that the decision of the Planning Commission relative to the Variance Application submitted by Daniel Doepke for property located at 832 South Main Street be reversed, and the Appeal granted. Mr. Stone seconded the motion. The motion passed by a 5-2 vote, with Mr. Beasley and Mrs. Beals voting no.

## CHELTENHAM SECTION FIVE RECORD PLAN

Mr. Schwab reviewed the Record Plan submitted for Cheltenham, Section Five, property located north of Alexandersville-Bellbrook Road and west of Wilmington Pike. The zoning of this 9.75 acre tract of land is R-1c, Single Family Residential. Mr. Schwab explained how this section of 18 lots fits into the overall preliminary plan for Cheltenham. Parkland dedication requirement has already been satisfied. The Planning Commission, by a 6-0 vote, recommended approval of this Record Plan to City Council, subject to the following conditions:

1. Sixty feet of right-of-way shall be dedicated along Wilmington Pike across the frontage of the development.
2. The plans for water lines and fire hydrants shall be subject to the approval of the Washington Township Fire Department.
3. Erosion control during construction shall be in accordance with the provisions of the City Stormwater Drainage Control Ordinance.
4. In lieu of completion of the required improvements prior to recording of the plat, a Performance Bond in an amount acceptable to the City Engineer shall be posted by the developer with the City of Centerville.

# RECORD OF PROCEEDINGS

284

Minutes of

Meeting

Held September 17, 1990 continued19

Mr. Schwab reviewed correspondence received from the Developer requesting that the dedication of right-of-way along Wilmington Pike be deleted from this Section Five and be a condition of approval in Section Six.

Mr. Kenning outlined the recommendation by the City Engineer that Cheltenham, Section Five be approved subject to the receipt of the following:

1. Acceptable Subdivider's Agreement.

2. A Performance Bond to cover the public improvements in the amount of \$132,000 of which \$18,361.00 is for sidewalks.

3. Inspection Fee in the amount of \$550.00.

A one year Maintenance Bond will be required when the public improvements are completed and the Performance Bond release is requested.

Upon question of Mr. Beasley, Mr. Schwab advised that Cheltenham is a Residential Cluster Development with lot sizes averaging one half acre.

Mr. Stone moved that the Record Plan for Cheltenham, Section Five, be approved as recommended by the Planning Commission including recommended conditions except for number 1, with the understanding that condition number one will be a condition of approval for Cheltenham, Section Six, and including all conditions recommended by the City Engineer. Mr. Singer seconded the motion. A roll call vote resulted in seven ayes in favor of the motion.

## ORDINANCE NUMBER 16-90 ZONING ORDINANCE AMENDMENT HILLS/BLACK REZONING

Mr. Beasley moved that Ordinance Number 16-90, An Ordinance Amending Ordinance Number 11-86 Dated July 21, 1986, The Zoning Ordinance By Rezoning 4.768 Acres More Or Less From R-PD Classification To R-lc Classification, And By Rezoning 4.866 Acres More Or Less From R-lc Classification To R-PD Classification, be set for Public Hearing. Mrs. Beals seconded the motion. The motion passed by unanimous vote with Mr. Compton abstaining.

Mr. Singer speaking as Chairman of the Stormwater Drainage Task Force, reviewed their progress to date. Following delays in the Contract work, the entire City has been mapped into fifty six plots for analysis of problems and solutions. Results should be finalized and available approximately January or February of 1991.

Mrs. Beals outlined the presentation she made at the Ohio Municipal League Conference in Columbus recently relative to Centerville's Recycling Program. The Presentation was well received and is now available for organizations to utilize.



DAYTON LEGAL BLANK CO. 10144

Held September 17, 1990 continued

19

## ORDINANCE NUMBER 15-90 B. P. OIL RIGHT OF WAY

The Public Hearing was held concerning Ordinance Number 15-90. Mr. Kenning reviewed this proposed Ordinance which appropriates real property necessary for right of way at the intersection of Wilmington Pike and Clys Road. Mr. Compton sponsored Ordinance Number 15-90, An Ordinance To Appropriate A Fee Simple Interest In Certain Real Property For The Project Known As The Clys Road - Wilmington Pike Improvement Project Within And Without The Corporate Limits of The City Of Centerville, Ohio, and moved that it be passed. Mrs. Beals seconded the motion. The motion passed by unanimous vote.

## B. P. OIL COMPANY APPEAL TO COUNCIL

Mr. Kenning recommended that the B. P. Oil Company - Appeal to Council against a decision rendered by the Planning Commission during their Meeting on Tuesday, March 27, 1990 for property located at the southwest quadrant of the intersection of Wilmington Pike and the proposed extension of Clys Road tabled during the Council Meeting held August 20, 1990 remain on the table until the October 15, 1990 Council Meeting. Mrs. Beals moved that the Appeal to Council filed by the B. P. Oil Company remain on the table until October 15, 1990. Mr. Compton seconded the motion. The motion passed by unanimous vote of City Council.

## RESOLUTION NUMBER 29-90 LIQUOR PERMITS

Mr. Kenning reviewed a proposed Resolution to encourage the Ohio Senate to pass a Bill now being considered to prohibit the issuance and renewal of liquor permits authorizing the sale of beer, wine, and mixed beverages at premises where gasoline or any other motor vehicle fuel is sold or offered for sale. Cities are joining together to solicit passage of this Bill by the Senate and House of Representatives. Mrs. Beals sponsored Resolution Number 29-90, A Resolution Expressing The City's Support Of Senate Bill 367, Presently Being Considered In The Ohio Senate, and moved that it be passed. Mr. Singer seconded the motion. The motion passed unanimously.

## RESOLUTION NUMBER 30-90 DEFERRED COMPENSATION

Mr. Kenning reviewed a proposed Resolution to offer the Ohio Municipal League Master Compensation Deferral Plan to the employees of the City of Centerville. This permissive legislation is offered at no cost or liability to the City of Centerville. This plan is similar to two compensation plans now available to City employees. Mr. Compton sponsored Resolution Number 30-90, A Resolution Authorizing And Directing The City Manager To Enter Into An Ohio Municipal League Master Compensation Deferral Plan And Contract Joinder Agreement, For Employees Of The City Of Centerville, and moved that it be passed. Mr. Stone seconded the motion. The motion passed unanimously.



Held

September 17, 1990 continued

19

## RESOLUTION NUMBER 31-90 SERVICES TO ANNEXED AREA

Mr. Kenning reviewed a proposed Resolution required by State Law indicating services to be provided to a proposed annexed area to the City. Services outlined in this Resolution are those services now being provided to all areas of the City of Centerville. Mr. Singer sponsored Resolution Number 31-90, A Resolution Stating The Services To Be Supplied By The City Of Centerville In Connection With The Proposed Annexation Of 2.127 Acres More Or Less To The City Of Centerville By The Williamsburg Company, An Ohio General Partnership, and moved that it be passed. Mr. Compton seconded the motion. The motion passed by a 6-1 vote with Mr. Beasley voting no.

## RESOLUTION NUMBER 32-90 LEAF LOADING MACHINE

Mr. Kenning reviewed a proposed Resolution authorizing the purchase of a hybrid leaf loading machine from Mid-State Power Equipment, Inc. at a quoted price of \$25,884.00 in lieu of competitive bidding. This leaf loader will improve the City's capability of removing wet and dry leaves from the streets yet this fall. This specialized equipment is only available from one source. Necessary funds have been budgeted. Mrs. Beals sponsored Resolution Number 32-90, A Resolution Determining That It Would Be Inappropriate And A Waste Of Taxpayers' Money To Secure Competitive Public Bidding On The Purchase Of A Hybrid Leaf Loading Machine For The Reason That There Is Only A Single Supplier Of Said Equipment Which Can Meet The Specifications Of The City, and moved that it be passed. Mr. Singer seconded the motion. A roll call vote resulted in seven ayes in favor of the motion.

## RESOLUTION NUMBER 33-90 GRANT APPLICATION

Mr. Kenning reviewed a proposed Resolution authorizing an application for grant money to purchase recycling equipment which would provide some flexibility into our present system. The cost of said equipment is approximately \$80,000.00. If the grant is obtained, the City's cost would be slightly over \$40,000.00. If grant money is not received, the equipment will not be purchased. Mr. Stone sponsored Resolution Number 33-90, A Resolution Authorizing The City Of Centerville To File An Application And Enter Into Agreement With The Ohio Department Of Natural Resources For The Purpose Of Acquiring Funds Through The Litter Prevention & Recycling Program Pursuant To The Ohio Litter Control Act of 1980, and moved that it be passed. Mr. Compton seconded the motion. The motion passed by unanimous vote.



RECORD OF PROCEEDINGS

287

Minutes of

Meeting

DAYTON LEGAL BLANK CO. 10134

Held September 17, 1990 continued 19

SISTER CITY COMMITTEE APPOINT SORRELS

Mayor Heintz advised that one vacancy exists on the Sister City Committee; Mr. Daniel Sorrels is interested in serving in this capacity. Mr. Kingseed moved that Mr. Daniel E. Sorrels be appointed as a Member of the Sister City Committee to complete the unexpired term of Mr. Ted van Ruiten. Mrs. Beals seconded the motion. The motion passed by unanimous vote of City Council.

SISTER CITY COMMITTEE REAPPOINT JOHNSON

Mayor Heintz advised that Mr. Raymond Johnson is interested in continuing his service to the City of Centerville as a Sister City Committee Member. Mr. Kingseed moved that Mr. Raymond Johnson be appointed to another three year term as a Member of the Sister City Committee. Mr. Compton seconded the motion. The motion passed unanimously.

Mr. Compton moved that a Special Meeting of Council be scheduled for Monday, October 1, 1990 to consider the B. P. Oil Company Record Plan. Mr. Beasley seconded the motion. The motion passed by unanimous vote.

There being no further business, the Meeting was adjourned.

Approved:

*Shirley F. Heintz*  
Mayor

ATTEST:

*Marilyn J. McLaughlin*  
Clerk of Council