

BROOKVILLE CITY COUNCIL
REGULAR MEETING
April 7, 2009

The Regular Meeting of the Brookville City Council was called to order by Mayor Seagraves at 7:30 p.m. on April 7, 2009 in the City Council Chambers. The pledge of allegiance was recited. Members Cantrell, Duncan, Letner, Reel and Ullery; Manager Wright, Assistant Manager Sewert, Law Director Stephan, Fire Chief Nickel, Sergeant Jerome and Director of Finance/Clerk Keaton were present. Member Garber and Police Chief Preston were absent.

Motion by Duncan, second by Reel to accept the Agenda as presented. All yeas, motion carried.

Motion by Reel, second by Duncan to accept the March 17, 2009 Regular Meeting Minutes as presented. All yeas, motion carried.

Gerald Peters, Perry Township Trustee, reported Perry Township will have a 2.5 mill Fire/EMS renewal levy on the May 5, 2009 ballot. Mr. Peters stated the Perry Township residents are receiving excellent service from both the Brookville and New Lebanon Fire Departments. Mr. Peters commented the Trustees decided to put the 2.5 mill levy on the May ballot as a renewal due to the economic times that we are facing. Mr. Peters requested Council support for this renewal levy.

Motion by Duncan, second by Ullery to endorse the passage of the Perry Township 2.5 mill Fire/EMS renewal levy on the May 5, 2009 ballot. All yeas, motion carried.

Manager Wright thanked all who participated in the Annual Community Park Cleanup. We had a great turnout and a lot of trash and tree debris were picked up.

Manager Wright reported the City recently held a meeting with the downtown business owners on the CDBG Grant that is available this year for work they may want to do on their buildings.

Assistant Manager Sewert reported 40 businesses were invited to the meeting and 30 attended. Both business owners and tenants were in attendance. The meeting was very informative and a lot of information was presented. There was very good dialogue and input on how to best utilize the monies available through this Downtown Business Improvement initiative. The businesses were asked to complete a survey and to date 10 have returned their surveys.

Member Cantrell commented she would be interested in seeing the surveys to see what comments were made about the downtown area.

Mayor Seagraves asked what the time frame was for this project?

Assistant Manager Sewert responded his goal is to receive final approval by May 15 and applications being available for the business owners to complete by June 1, 2009.

Manager Wright reported he attended a Consolidated Emergency Communications Center Policy Committee Meeting on March 30 and they did not have a quorum present so a vote could not be taken. The next meeting is scheduled for April 27 to approve the by-laws and to review dispatch charges and projections. Manager Wright reported any elected official can attend and vote at these meetings. Manager Wright reported Council should have a copy of a letter from the Montgomery County Sheriff and Administrator explaining the problems the Communications Center experienced when they opened and what they are doing to fix these problems.

Manager Wright reported the City recently submitted a Montgomery County Solid Waste Grant for the purchase of recycled benches and picnic tables. Manager Wright stated the City has applied and received grant money over the past few years for promoting recycling, waste reduction, litter prevention and end use of recycled materials.

Assistant Manager Sewert reported the grant, if approved, will provide benches, tables and a gazebo in the area next to the Five Rivers Wolf Creek Rail Trail at the corner of Mulberry and Salem Streets. This will allow walkers and bikers on the bikeway to stop and rest. Assistant Manager Sewert commented that we should know in a couple of weeks if we are awarded this grant.

Member Cantrell inquired if we will be getting bike racks for this area.

Assistant Manager Sewert reported the Brookville Chamber of Commerce donated three bike racks that will be placed along the bikeway. One will be placed at this location.

Manager Wright reported Council should have a copy of a letter from DP&L that provides information on vegetation management for safety and reliability. The letter states when performing preventive routine trimming, DP&L's line clearance contractors remove and/or chip tree limbs and the debris from the property owner's trees, as long as they are less than four inches in diameter. Logs greater than four inches in diameter will be stacked at the base of the tree from which they came. The logs are left for the property owner's use. DP&L notifies residential customers at least one week prior to trimming in their area. When a power outage is the result of a storm, tree limbs often need to be cut away before power can be safely restored. In those emergency situations, DP&L does not remove the debris. Their priority is to work quickly to restore power to all of their customers. Brush and wood are left at the property for disposal.

Manager Wright reported Council should have a copy of a letter addressed to Chief Preston in response to his letter on the Brookville-Salem and Upper Lewisburg-Salem Road intersection. The letter states the Montgomery County Engineer's Office has completed the safety study at this intersection. The Engineer's Office has made the decision to convert the existing two-way stop control at the intersection to a four-way stop control. Work is scheduled to be completed in the near future.

Manager Wright reported the Montgomery County Board of County Commissioners recently adopted a Resolution approving their participation in our Issue Two Grant, W. Westbrook Road Improvement Project. The County's portion of the construction cost is estimated at \$36,788.50.

Manager Wright reported the Miami Valley Regional Planning Commission (MVRPC) formally approved the list of proposed transportation projects for the Region's allocation of federal "stimulus" dollars. The City submitted the Wolf Creek Street Mill and Resurfacing Project with a total project cost of \$279,919 and MVRPC recommended federal funds for this project totaling \$200,000. This project will be funneled through the Ohio Department of Transportation. Manager Wright reported this project may not get completed this year due to time constraints.

Manager Wright presented a request from the Brookville Baseball Club for their annual parade.

Motion by Reel, second by Cantrell to approve the parade for the Brookville Baseball Club to be held on May 2, 2009 beginning at 11:00 a.m. with the parade route to proceed from Carr Drive, right on Albert Road, left on Salem Street, left on Market Street, right on Wolf Creek Street, right on Arlington Road, right on E. Upper Lewisburg-Salem Road to Golden Gate Park. All yeas, motion carried.

Member Letner reported he recently viewed the improvements to Shelter #4 in Golden Gate Park during the Community Park Cleanup. Member Letner stated he was impressed with the improvements and thanked the VFW for their donation for this project.

Fire Chief Nickel presented his Response Time Analysis Report. The report shows the Brookville Fire Department responded to 95 alarms between March 18 and April 6, 2009. The overall average response time was seven minutes and thirty-two seconds. The report was also broken down by incident type and day of week, with Sunday having the most alarms and Tuesday having the least alarms.

Sergeant Jerome reported the Speedway Station was robbed on March 17 by a lone white male who displayed a handgun. This case is still under investigation. On March 30, the Fifth Third Bank was robbed by a lone white male who handed the teller a note. The teller began yelling at the robber who then fled the building. The subject was later apprehended by a Clayton Detective.

Sergeant Jerome reported during the last three weeks, the Brookville Police Department has experienced a number of cars being broken into and items taken from the vehicles. Most of

the vehicles were left unlocked by the owners. Sergeant Jerome reminded everyone to keep their vehicles locked at all times when they are parked outside.

Sergeant Jerome presented the Incident Log from March 17 through April 5, 2009. There were 40 incidents in this time frame.

Law Director Stephan had no report.

Finance Director/Clerk Keaton presented the March 31, 2009 Fund Balance for Council review and approval.

Motion by Duncan, second by Letner to approve the March 31, 2009 Fund Balance as presented. All yeas, motion carried.

Finance Director/Clerk Keaton presented a Combined Detail Report of the year-to-date revenues and expenditures for each Fund and how they compare to the current year budget. Most of the year-to-date revenues and expenses are down slightly from what were budgeted. The biggest concern to date is the decline in income tax receipts. Finance Director/Clerk Keaton commented to date, income tax receipts are down approximately \$42,500, or 7.8% from where we were one year ago, and this revenue source is being monitored very closely.

Finance Director/Clerk Keaton requested Council approval to transfer \$189,101.10 from the General Fund to the Bond Retirement Fund as appropriated.

Motion by Cantrell, second by Letner to authorize the transfer of \$189,101.10 into the Bond Retirement Fund as appropriated and requested by Finance Director Keaton. All yeas, motion carried.

Finance Director/Clerk Keaton reported our 2009 Note was priced today and the same Investment Firm that purchased the 2008 Note purchased the 2009 Note. The interest rate on the 2009 Note is 2.875%. The 2008 Note had a 2.75% interest rate.

Finance Director/Clerk Keaton reported she was recently notified by the Division of Liquor Control that all permits to sell alcoholic beverages in the City of Brookville will expire on June 1, 2009. In order to maintain permit privileges, every permit holder must file a renewal application. Ohio Revised Code Section 4303.27(B) provides the legislative authority with the right to object to the renewal of a permit and to request a hearing. Finance Director/Clerk Keaton stated she spoke with Police Chief Preston and he has no objection to any of our current permit holders renewing their permits with the Division of Liquor Control. Finance Director/Clerk Keaton recommended Council waive the right to object to the renewal of the yearly permits to sell alcoholic beverages in the City that expires on June 1, 2009.

Motion by Duncan, second by Reel to waive the right to object to the renewal of the yearly permits to sell alcoholic beverages in the City that expire on June 1, 2009. All yeas, motion carried.

Finance Director/Clerk Keaton reported Council recently adopted Ordinance No. 2009-05, which adopted a VSP fee. On March 23, she received a telephone call from Mike Gray, Director of Government Affairs with Time Warner Cable. Mr. Gray advised her that he was told by the Finance Department that Time Warner Cable has been paying the City advertising revenues even though the Franchise Agreement specifically did not provide for payment of advertising revenues. Finance Director/Clerk Keaton recommended that Council adopted proposed Ordinance No. 2009-08, which amends the Video Service Provider Fee Ordinance to include advertising revenues. This will not increase our citizens cable bills.

Motion by Duncan, second by Letner to read proposed Ordinance No. 2009-08. All yeas, motion carried.

Motion by Duncan, second by Cantrell to accept the first reading, dispense with the second and third reading and adopt Ordinance No. 2009-08 entitled "AN ORDINANCE AMENDING THE CODE OF ORDINANCES SECTION 743.02, VSP FEE, AND DECLARING IT AN EMERGENCY." All yeas, motion carried.

Finance Director/Clerk Keaton reported the City of Vandalia Income Tax Department assisted 26 residents on Friday and 16 residents on Saturday with their local income tax returns at our City Building. This is a sharp decline from previous years. Mayor Seagraves wished everyone a Happy Easter.

Mayor Seagraves thanked Vice Mayor Ullery for filling in for him at the last Council Meeting and thanked everyone for their well wishes, cards and flowers during his surgery and recovery.

Mayor Seagraves thanked everyone that participated with the Community Parks Cleanup. He heard we had a great turnout.

Mayor Seagraves reported the City's tornado sirens were activated on Sunday evening by the Montgomery County Dispatch Center. The City does not activate these sirens. The sirens are activated to make those residents who are outside aware that imminent weather is approaching and to take cover. The sirens are not meant to be heard by people inside their homes.

Mayor Seagraves reported the Miami Valley Regional Planning Commission will be holding their annual spring dinner on April 22 and Council is invited to attend.

Chairperson Watkins, of the Brookville Planning Commission, read Planning Commission's motion on the Site Plan for Lot 2087. Motion by Watkins, second by Boose to approve the Planned Commercial Development Site Plan for Lot 2087, 533 Western Avenue, as submitted and presented. All yeas, motion carried.

Motion by Duncan, second by Ullery to read proposed Ordinance No. 2009-06. All yeas, motion carried.

Motion by Duncan, second by Ullery to accept the second reading of proposed Ordinance No. 2009-06. All yeas, motion carried.

Motion by Ullery, second by Letner to read proposed Ordinance No. 2009-07. All yeas, motion carried.

Motion by Cantrell, second by Ullery to accept the second reading of proposed Ordinance No. 2009-07. Cantrell yea, Letner yea, Ullery yea, Reel nay, Duncan nay and Seagraves yea. Motion carried with four yeas and two nays.

Motion by Duncan, second by Ullery to read Resolution No. 09-09. All yeas, motion carried.

Motion by Duncan, second by Ullery to accept the first reading, dispense with the second and third reading and adopt Resolution No. 09-09 entitled "A RESOLUTION REAPPOINTING MR. JEFFREY A. SEWERT ASSISTANT CITY MANAGER FOR THE CITY OF BROOKVILLE, OHIO, AND ESTABLISHING HIS ANNUAL SALARY AND EMPLOYMENT BENEFITS, AND DECLARING IT AN EMERGENCY."

Member Cantrell stated she is not in favor of the retire/rehire program. As a member of the private sector and an elected official she stated she felt it necessary to state her position and those opinions others had shared with her. In her research Member Cantrell had learned the retire/rehire policy was put into place by OPERS to address the teacher shortage so that qualified teachers could be retained to teach our children. While this was possibly a good policy to address this issue, it has become common place in other areas of the public sector. In light of our current economic conditions and a 10% unemployment rate, Member Cantrell stated that this procedure of retire and automatically rehire be reconsidered. Member Cantrell stated she does not begrudge an individual who has paid into and then receives their retirement benefits. She did state that an employee should choose to retire or to work. And, if the choice is to retire, they of course are welcome to reenter the work force. However, the position from which this employee is retiring should be opened up to all applicants, and the retirant, should they wish to be rehired, should then be considered for the opening with other applicants who choose to apply. Member Cantrell also stated that legislative agendas have been addressing the retire/rehire policy and it appears the sentiment in the legislature is to limit this practice with new Bills now being presented.

The vote was taken on proposed Resolution No. 09-09. Ullery yea, Reel yea, Duncan yea, Cantrell nay, Letner yea and Seagraves yea. Motion carried with five yeas and one nay to adopt Resolution No. 09-09.

Motion by Duncan, second by Letner to read proposed Ordinance No. 2009-02. All yeas, motion carried.

Mayor Seagraves opened the floor for discussion.

Lowell Petry, of 542 Western Avenue, asked Law Director Stephan if the vote goes through, what can they do to turn that over.

Law Director Stephan stated our Charter would permit this Ordinance if passed by City Council to be subject to referendum. A petition signed by electors equal in number to 10% of the number of votes cast at the last preceding regular municipal election must be filed with the Clerk within 30 days after passage of the Ordinance requesting it be submitted to a vote of the electors at the next regular primary or general election.

Leon Williamson, of the Brookville Planning Commission, asked Law Director Stephan to explain the Planned Commercial Development zoning.

Law Director Stephan stated a Planned Commercial district is a zoning district for commercial uses that permits Planning Commission and City Council to control development of a commercial project through the Planned Development process. In this case, Planning Commission has used the Planned Development process to restrict the use of this building for storage use for this business only and to approve a specific site plan for this project.

Garnett Buckley, of 31 March Avenue, asked if we are setting a precedent here when someone wants to rezone a lot? Ms. Buckley asked if they are going to have a dumpster on the property?

Law Director Stephan stated the Site Plan includes a dumpster that will be placed on a concrete slab at the front corner of the building. The dumpster will be totally fenced in.

Mr. Petry commented that he does not understand why Council listens to one person and 85 people signed a petition. Mr. Petry stated Council is doing a good job, but Council needs to listen to the citizens.

Mayor Seagraves remarked Council has not taken a vote on this yet tonight. Mayor Seagraves stated he sees both sides of this issue. Mayor Seagraves stated he can certainly see Mr. Roberts interest in this rezoning, but when he sees 85 residents that show up at all of these meetings and express their concerns on this issue, we need to listen to them too. Mayor Seagraves stated we do hear you and the other citizens.

Janet Schreier, of 157 Timberwolf Way, stated her concern with this proposed rezoning is with the children walking to and from school, especially if the new elementary school is built right behind this building on Western Avenue.

Member Duncan commented he recently spoke with school officials and there are three locations they selected for the new elementary school, and one location is right behind this building on Western Avenue.

Tim Donahoo, of 119 Antwerp Avenue, stated he is a trucker and a lot of tractor trailers are not permitted to drive through residential areas or near schools.

JoAnne Skidmore, of 548 Western Avenue, stated she is standing behind what Mr. Petry said. She doesn't want to see a dumpster out her front door.

Tim Via, of Number Nine Road, stated he is the owner of 533 Western Avenue, and he isn't quite sure what all the resistance is on this rezoning. Mr. Via stated he has attended several meetings and he first heard about the traffic concerns. Mr. Via stated he did his homework and found the school has 150 busses and delivery truck traffic on a daily basis. Mr. Roberts will only have a truck or two. At the next meeting he attended he heard their concerns were with a

dumpster on the property. Mr. Via stated he counted eight dumpsters within a stones throw of his property. Mr. Via stated with jobs leaving, denying this rezoning will hurt this business and could lead to more jobs leaving. Mr. Via commented the school was also interested in this building for cold storage for their lawnmowers.

Mrs. Skidmore commented she wants the community to stay as is.

Mr. Petry stated it seems we fight change more than anything.

Member Reel reiterated that he is voicing his objection to this proposed Ordinance because it downgrades the zoning, which he is not in favor of doing.

Member Duncan stated he agrees with Member Reel. We are trying to change zoning that we fought so hard to keep.

Member Letner expressed concern for the dumpster. Member Letner asked Mr. Roberts if he needed to have a dumpster there.

Mr. Roberts stated yes.

Member Letner expressed concern for the lighting. Member Letner stated he does not want to see flood lights shining on the neighbors. Member Letner stated he does not want to see signs plastered all around.

Law Director Stephan stated that Exhibit B of the Site Plan provides that no additional lights would be added to the site. The Site Plan provides for a sign on the building that would not exceed 25 square feet, which meets the zoning requirements. The dumpster will be located on the front north corner of the building. Vegetation will be planted to delineate the property line. The driveway will be expanded as set forth on the Site Plan.

Member Letner inquired if there are any other buildings in Brookville that Mr. Roberts would consider purchasing.

Assistant Manager Sewert stated that he has been working with Mr. Roberts over the last three years for a site for him, and there aren't any.

Motion by Duncan, second by Cantrell to accept the second reading of proposed Ordinance No. 2009-02. Reel nay, Duncan nay, Cantrell nay, Ullery nay, Letner nay and Seagraves nay. All nays, Ordinance No. 2009-02 failed to be adopted.

There was no Old Business.

In New Business, Member Duncan requested an Executive Session on Contract Negotiations.

Motion by Duncan, second by Ullery to go into Executive Session on a Contract Negotiation Matter as requested by Member Duncan. All yeas, motion carried.

Mayor Seagraves called Council back into Regular Session.

Motion by Duncan, second by Cantrell to adjourn. All yeas, motion carried.

Sonja M. Keaton, Clerk

David E. Seagraves, Mayor