

MINUTES OF COUNCIL MEETING
CITY OF UNIVERSITY HEIGHTS
JUNE 15, 2009

Mayor Rothschild called the meeting to order at 7:30 p.m.

Roll Call: Present: Mrs. Adele H. Zucker
Ms. Frankie B. Goldberg
Mr. Steven D. Bullock
Mr. Peter R. Bernardo
Mr. Kevin Patrick Murphy
Mr. Frank Consolo
Mr. Steven Sims

Also Present: Clerk of Council Nancy E. English
Law Director Kenneth Fisher
Finance Director Anthony L. Ianiro
Deputy Chief of Police James Rohal
Fire Chief John Pitchler
Community Coordinator Walter Stinson
Service Director Christopher Vild
Building Commissioner David Menn
City Engineer Joseph R. Ciuni

Minutes of the regular meeting held on June 1, 2009

There were no corrections or additions to the minutes of June 1, 2009.

MOTION BY MRS. ZUCKER, SECONDED BY MS. GOLDBERG to approve the minutes of the June 1, 2009 meeting. On roll call, all voted "aye."

Comments from the Audience

Harvey Morrison, 2424 White Rd., chairman of the University Heights Charter Review Commission, thanked Council members for the opportunity to serve on the Charter Review Commission (CRC) and for their courtesy and cooperation during the review process. He stated that the Commission offered the public an opportunity to participate in the process. He added that they listened to the residents, took some suggestions into consideration and rejected others. Mr. Morrison stated that the review has been completed and the recommendations as presented by the CRC are in the best interest of the City of University and its residents.

Elizabeth Englehart, 2328 Glendon Rd., mentioned that house cats have been coming into your yard, which is a certified backyard wildlife habitat through the American Wildlife Federation, and killing birds and baby bunnies, left dead mice on her door step and left feces in her yard. Mrs. Englehart requested that residents be informed of the laws that cats are not allowed to run at large.

Law Director Kenneth J. Fisher stated that Mrs. Englehart is correct because under the provisions of Section 618.01 of the Codified Ordinances no person shall permit domestic cats to run at large. He advised Mrs. Englehart to notify the police of the violation for proper enforcement.

Henry Zucker, 2461 Claver Rd., questioned what would happen if the Charter amendment establishing a city administrator and reducing the role of the mayor is defeated on the November ballot since Councilman Murphy has publicly announced that he is running as a part-time mayor. Mr. Zucker's concern was that should Mr. Murphy win the election and his employer not allow him to take a full-time position as mayor, Mr. Murphy could resign and four members of the current Council could appoint a new mayor. Mr. Zucker stated that this would be a serious situation and suggested that perhaps there should be two mayoral races, one for full-time and one for part-time. Mr. Fisher stated that he will answer the question after the filing deadline in September if there is a issue at that time.

Reports and Communications from the Mayor and the taking of action:

Mayor Rothschild announced that the band concert series has started on Thursday evenings at Wiley Middle School.

Mayor Rothschild reported on news from the State of Ohio. The Conference Committee has been formed to find a solution between the House and Senate versions of the budget including the school funding system.

Agenda Items:

**A. Planning Commission Recommendation:
Bellefaire JCB, 22001 Fairmount Blvd. - Approval of site lighting
improvements throughout the campus.**

Mayor Rothschild reported that at its meeting on June 3, 2009, the Planning Commission passed the following motion with respect to the application from the Bellefaire JCB:

“MOTION BY MR. REICHEK, SECONDED BY MR. BOLOTIN to recommend to City Council that the application of Bellefaire JCB, 22001 Fairmount Blvd., for site lighting improvements be approved as presented on Existing Conditions Survey ES-1, dated 05/14/08, Site Lighting Plan SL-1, dated 03/09/09, and Electrical Specifications and Details SL-2, dated 03/09/09, conditioned upon Bellefaire meeting with impacted residents on South Belvoir Blvd. and Milton Road prior to appearing before City Council for final approval, and subject to the approval of all City departments. On roll call, all voted ‘aye.’”

Present representing Bellefaire JCB was Mrs. Deborah Cowan, associate director of Bellefaire, Mr. Tony Bledsoe, senior electrical designer, Tec, Inc., and Mr. Anthony Coyne, attorney, Mansour, Gavin, Gerlack & Manos. Mrs. Cowan stated that Bellefaire is a leader in behavioral health care serving 12,000 clients per year. She explained that Bellefaire is proposing improvements to the lighting on its campus for the safety of clients and employees. She mentioned that much of the campus is poorly lit and does not meet current recommended safety standards. Mrs. Cowan added that Bellefaire has received funds from the State of Ohio to make capital improvements to the campus. She noted that the paving project undertaken last year was the first part of those capital improvements. The second part of the project is the proposed lighting improvements.

Mrs. Cowan stated that Bellefaire scheduled a meeting for the neighbors as required by the Planning Commission. No one attended the meeting, but a couple did come in to review the plans. They were pleased with the plans, and their only request was that no trees be cut down.

Mr. Tony Bledsoe, the electrical engineer and lighting designer for the project, presented an overview of the plans. Mr. Bledsoe stated that the main design goal was to maintain the character of the site. He noted that they also want to maintain a uniform appearance. Therefore, the new 10ft. high decorative poles on the walkways will have the same look as the existing poles and the new lights for the parking lot will be exactly the same as the existing lights. Mr. Bledsoe stated that some existing poles will be refurbished by refinishing the turquoise colored poles and fixtures with a bronze color. The two different light colors on the campus (yellow and white) will be changed to all white.

Mr. Bledsoe noted that currently Bellefaire has two points of controls for all the site lights – whereby all the lights come on at the same time and go off at the same time. However, the new design will include new lighting controls with individual programming for each building and the light posts around the building. This will allow Bellefaire to keep the lights on in a certain area when programs extend beyond daylight hours. Approximately 50 light posts or poles will be added, most of which will be on the interior of the campus. He explained that in the interior of the campus, the light fixtures will illuminate in all four directions. However, the lights on the perimeter of the campus will be adjusted to direct the light into the site with rear cut off shields so that the light would reflect only 20 ft. behind the pole, thereby minimizing light pollution into the neighborhoods. Mr. Bledsoe added that the lights on the east and west perimeters will have their own controls.

Mayor Rothschild inquired as to who would be in control of timing the clocks or if they will work electronically. Mr. Bledsoe replied that after the seven (7) different time clocks are installed the contractor who installs them will work with Bellefaire and Tec, Inc. to set up the controlled timing circuits which will turn on or off automatically. He added that they can be adjusted, if needed.

Mr. Bernardo asked if any lights will remain on all night. Mr. Bledsoe replied that some interior lights will stay on all night.

Mr. Bullock inquired if the lights on the perimeter of the campus will extend into the neighbors' properties. Mr. Bledsoe responded that the lights will not extend into the neighbors' properties because the light poles will be set 25 ft. off the property line and since the light will only reflect 20 ft. behind the pole there will be an additional 5 ft. of clearance to the property line.

Vice Mayor Zucker noted that she expressed concern at the Planning Commission meeting that the neighbors might be concerned about the lights on the perimeter of the campus. She thanked Bellefaire for holding the meeting for the neighbors.

Ms. Goldberg inquired as to what time the lights will go out in general. Mrs. Cowan noted that most programming will end by 8:00 p.m., but occasional meetings should be completed by 9:30 p.m. and the lights will be turned off afterward.

Mr. Consolo stated that he feels the lighting improvements are good. But, he suggested that some of the funds be used to fix the catch basins problems. Mr. Anthony Coyne and Mrs. Cowan stated that they will take Mr. Consolo's concern back to Dr. Adam Jacobs, executive director of Bellefaire.

MOTION BY MRS. ZUCKER, SECONDED BY MR. BULLOCK to approve the Planning Commission recommendation as presented. On roll call, all voted "aye."

B. Appeal to the Board of Zoning Appeals' decision of June 10, 2009 regarding the .82% variance on lot coverage granted to Matthew and Jennifer Bauman, 14389 East Carroll Blvd.

Joel and Jeannine Libava, 14408 Carroll Blvd., filed an appeal to Council to overturn the approval of the Board of Zoning Appeals application by Matthew and Jennifer Bauman, 14398 East Carroll Blvd., for a .82% variance on lot coverage.

Building Commission David Menn offered a brief overview of the history on the issue. Mr. Menn noted that Mr. Bauman came to him in October for guidance on to proceed in building a 15ft. high shed. First, Mr. Menn recommended that he talk to his neighbors and the neighbors approved. Next he applied to the Board of Zoning Appeals in November, 2008. Notices were sent to the neighbors, but no one showed up at the meeting, and the Board approved the 5ft. variance on height. Then, Mr. Menn received a complaint in December from Mr. Libava, who was concerned about the size of the structure, land coverage, and closeness to his property line. A survey was performed by the GPD Group which verified the land coverage issue of being .82% over the maximum of 25%. Also, the shed was built 2.55ft. off the property line at on corner and 2.66ft. off the property line at another corner.

Law Director Kenneth J. Fisher stated that the 3ft. setback is not a Code requirement, but rather a condition of the plan as approved. He stated that there is an encroachment within the 3ft. setback, but it is not an issue for this meeting. Mr. Fisher stated that the variance on the lot coverage is the only issue being appealed.

Mr. Menn stated that a violation notice was issued on lot coverage. Mr. Bauman had thirty (30) days to come into compliance by either removing the shed or to request a variance from the Board of Zoning Appeals on the lot coverage. He filed an application with the Board of Zoning Appeals which was heard May 13, 2009, but the item was tabled in order to obtain a survey. The item was heard again on June 10, 2009, at which time, the variance was granted.

Mayor Rothschild reported that at its meeting on June 10, 2009, the Board of Zoning Appeals passed the following motion with respect to the Baumans' application:

"MOTION BY MR. COZZENS, SECONDED BY MAYOR ROTHSCHILD to approve the application of Matthew and Jennifer, 14398 East Carroll Boulevard, to grant a variance of .82% on lot coverage conditioned upon painting the shed the colors of the house and trim and a landscape plan being submitted to the Building Department. On roll call, all voted "aye," except Mr. Zucker and Mr. Jaffe, who voted 'nay.'"

Mayor Rothschild stated that she was not at the original BZA meeting, but she did recommend that trees be planted to block the Libavas' view of the shed.

Mr. Fisher stated that under Section 1244.08 of the Codified Ordinances, Council shall hear both sides of the issue and give its decision within a reasonable period of time.

Mr. Joel Libava stated that he and Mrs. Libava were opposed to the variance on lot coverage. Mr. Libava stated that Mr. Bauman approached him in November of 2008 and asked if they had any objections to him building a shed for his work items and offered to show him the plans, but Mr. Libava declined because he was not familiar on how to interpret the plans. He also stated that they received the notice for the initial BZA meeting, but choose not to attend because he trusted what Mr. Bauman had been presented to the City.

Mr. Libava stated that when the building was being constructed he immediately noticed that it was not a shed, but rather a barn, which is more like a commercial structure. Therefore, he contacted the Building Commissioner with his objections. Mr. Libava added the they also oppose the variance because the shed was not built to the specifications. The shed was not to cover more that 25% of the lot and the structure was to be 3ft. away from the property line.

Mr. Libava mentioned that Section 1105.03 of the Codified Ordinances provides that construction cannot impair values and must be in harmony with the residential neighborhood. Mr. Libava stated that he believes his home value has been adversely affected. He added that they are personally affected and aggrieved by the situation because his family cannot enjoy their backyard anymore. He contended that the plans should have been submitted to the Architectural Review Board before approval. He also suggested that the planting of trees will not be a viable solution because the area is too narrow and it will take years for the trees to grow to a height to obstruct the view of the building and will further block the sun and breeze to his home.

Mr. Libava stated that he and his wife do not object to the Baumans having a structure to store their business equipment in as long as it is of an appropriate size and of an architectural design that is in harmony with the neighborhood. He added that the structure should be placed in the center of the backyard. Mr. Libava requested that the Council deny the variance and have Mr. Bauman remove the structure from the backyard.

In response to a question from Mr. Consolo, it was noted there was no opposition at the first meeting where the height variance was discussed. Mr. Sims inquired if the Board of Zoning Appeals knew what the structure would look like and its affect on the neighborhood. Mr. Menn stated that the Board did not have a picture of the proposed structure. Mr. Fisher stated that the initial issue before the Board was the 5ft. variance on the height of the structure and since there was no opposition, the variance was approved.

Mr. Bullock requested clarification on whether or not the plans were followed. Mr. Fisher replied that the structure as constructed violates the plans. He added that if the situation is not corrected Mr. Bauman will be cited to Shaker Heights Municipal Court. Mr. Bullock understood that the building is a very large structure on a small lot, but was hopeful the two families could resolve the issue between themselves. Mr. Consolo disagreed and felt that the issue affects the entire community because a precedence may be set. Mayor Rothschild stated that there were attempts to resolve the issue between the parties with the assistance of Community Coordinator Walter Stinson.

Mr. Bauman stated that he was cited for having his business equipment in the backyard so he requested the height variance on the shed because one of the ladders which has to be stored is 16ft. long when collapsed; therefore, the extra height was needed to maneuver it into the shed. Ms. Goldberg stated that the structure does not belong in a residential neighborhood because it sets a terrible precedent and may impact home values.

Mr. Bernardo mentioned that if the trees are planted as approved they would have to be planted on the Libavas' property. Mr. Bauman stated that he has made arrangements to move the structure further into the middle of the yard so the trees will not encroach on the Libavas' property. Mr. Bauman added that he has also requested quotes from three professional landscapers to make recommendations on specifications for the type of trees. He noted that plans to move the shed are being prepared, but a starting date will not be set until after this issue is resolved.

Mr. Fisher stated that the variance on the height of the structure was approved and no appeal was made within the time limit. Therefore, the height of the structure is not an issue. He added that in hindsight the design of the structure could have been sent to the Architecture Review Board, but there is no code provision to require the review. Therefore, the Building Commissioner acted properly.

Mr. Consolo inquired if the code allows commercial equipment to be stored on residential property. Mr. Fisher mentioned that it is lawful to operate a business out of a residence and until the shed was built, the Libavas and Baumans have coexisted for years with Mr. Bauman running his business out of their home.

Mr. Fisher reiterated that the issue for the Council at this meeting is whether the decision of the Board of Zoning Appeals to grant a variance of .82% on lot coverage should be upheld or reversed.

MOTION BY MR. CONSOLO, SECONDED BY MR. SIMS to grant the appeal and overturn the Board of Zoning Appeal decision to grant the variance of .82% on lot coverage. On roll call, all voted “aye,” except Mrs. Zucker, who “recused” herself because her husband serves on the Board of Zoning Appeals.

Mayor Rothschild stated that this issue is a perfect example of why the City’s Planning and Zoning Code should be updated.

C. Ordinance No. 2009-28 Authorizing the purchase of one (1) leaf collector for the Service Department through State Purchasing

Ordinance No. 2009-28 authorizes the purchase of one (1) leaf collector for the Service Department through the Ohio Cooperative Purchasing Program from Jack Doheny Company in an amount not to exceed \$36,261.

Service Director Christopher Vild reported that the new unit will replace a 1971 rubbish truck that was converted for leaf collection last year. The purchase was recommended by the Service and Utilities Committee and is a budgeted item. The funds will be expended from the Tree Fund.

MOTION BY MRS. ZUCKER, SECONDED BY MR. BULLOCK to approve the passage of Ordinance No. 2009-28 as an emergency measure. On roll call, on suspension of rules, all voted “aye,” except Mr. Consolo, who voted, “nay.” On roll call, on passage, all voted “aye,” except Mr. Consolo, who voted, “nay.”

D. Ordinance No. 2009-29 Authorizing the purchase of one (1) fingerprint system for the Police Department (2nd Reading)

Ordinance No. 2009-29, which was placed on first reading on June 1, 2009, authorizes the purchase of one (1) Live Scan Fingerprint System for the Police Department from Biometric Information Management in an amount not to exceed \$14,183.

Detective Lt. James Williams explained that the new fingerprint system will allow fingerprints to be sent electronically to the State crime and identification lab and to the FBI for accessing criminal history records. He added that it would replace the current ink printing system, would save time, and eliminate delays in reporting arrest records. Mr. Bullock stated that the Safety Committee has reviewed the request and recommended the purchase.

Mr. Consolo reiterated his position to vote in the negative on the purchase of the fingerprint system and leaf collector because he would like the funds for the purchases found in the General Fund of each department before expending additional funds on the purchases. Finance Director Anthony Ianaro stated that the funds are available within the General Fund budget of the Police Department.

MOTION BY MR. BULLOCK, SECONDED BY MR. MURPHY to approve the passage of Ordinance No. 2009-29 as an emergency measure. On roll call, on passage, all voted “aye,” except Mr. Consolo, who voted, “nay.”

E. Resolution No. 2009-31 To enter into an agreement with Mr. Excavator for the University Parkway Roadway Reconstruction Project (2nd Reading)

Resolution No. 2009-31, which was placed on first reading on June 1, 2009, authorizes the Mayor to enter into an agreement with Mr. Excavator, Inc., the lowest and best bidder, for the University Parkway Roadway Reconstruction Project in an amount not to exceed \$679,508.28.

City Engineer Joseph Ciuni reported that State Infrastructure Bank (SIB) loan has not been approved as of this date, but it is anticipated to be approved by the end of the week. Mr. Ciuni recommended tabling the legislation until the loan is approved. Mr. Fisher agreed that the legislation should be tabled until funding is approved.

MOTION BY MR. CONSOLO, SECONDED BY MRS. ZUCKER to table Resolution No. 2009-31. On roll call, all voted “aye.”

F. Ordinance No. 2009-33 To appoint Anthony Ianiro as Director of Finance on a part-time basis and to establish the compensation thereof

Ordinance No. 2009-33 appoints Anthony Ianiro as Director of Finance on a part-time basis and establishes the compensation of the Director of Finance (part-time) in an amount not to exceed \$20,250 at a bi-weekly rate of \$1,350 commencing June 3, 2009 until December 31, 2009. Since the position is on a part-time basis, contributions will be made to the Ohio Public Employees Retirement System, but without other fringe benefits.

MOTION BY MR. SIMS, SECONDED BY MS. GOLDBERG to approve the passage of Ordinance No. 2009-33 as an emergency measure. On roll call, on suspension of rules, all voted "aye." On roll call, on passage, all voted "aye."

G. Resolution No. 2009-34 Adopting the 2010 Tax Budget

Resolution No. 2009-34 adopts the Tax Budget for the calendar year commencing January 1, 2010. Finance Director Anthony L. Ianiro reported that the legislation must be passed by July 15, 2009 and received by the County Budget Commission by July 20, 2009. Mr. Sims stated that the Finance Committee discussed the Tax Budget in detail.

MOTION BY MR. SIMS, SECONDED BY MR. BERNARDO to approve the passage of Resolution No. 2009-34 as an emergency measure. On roll call, on suspension of rules, all voted "aye." On roll call, on passage, all voted "aye."

H. Ordinance No. 2009-35 Accepting the final report of the Charter Review Commission and submitting proposed Charter amendments to the electorate on November 3, 2009

Ordinance No. 2009-35 accepts the final report of the University Heights Charter Review Commission and submits the proposed amendments to the Charter to the electorate of the city at the November 3, 2009 general election.

Mr. Bernardo stated that in approving the ordinance, the Council is not voting to agree or disagree with anything which is contained within the report, but rather is simply accepting the report of the Charter Review Commission and submitting the amendments to the electorate. Mr. Fisher added that Ordinance No. 2008-45, as amended, which established the Charter Review Commission, provides that Council shall place the issues on the ballot based on the ballot language prepared by the Law Department.

Mr. Sims thanked the Charter Review Commission for its dedicated work in the development of the report. He was hopeful that a resolution thanking the commission for its work would have been on this meeting's agenda. Mr. Consolo agreed. It was noted that a draft resolution was prepared and reviewed by Council. Mr. Fisher stated that he would review the draft resolution as to form for passage at a later date.

MOTION BY MR. CONSOLO, SECONDED BY MR. MURPHY to approve the passage of Ordinance No. 2009-35 as an emergency measure. On roll call, on suspension of rules, all voted "aye." On roll call, on passage, all voted "aye," except Mrs. Zucker, who "passed."

I. Ordinance No. 2009-36 To enter into a contract with Senior Transportation Connection (STC) for senior transportation services

Ordinance No. 2009-36 authorizes the Mayor to enter into an agreement with the Senior Transportation Connection to provide transportation services for senior and disabled residents of University Heights for the period beginning July 1, 2009 and ending June 30, 2010. Mayor Rothschild stated that this service will replace the service provided by TC3, which is ceasing its operation as of June 30, 2009.

Ordinance No. 2009-36 was placed on first reading. There were no objections.

J. Motion to hold an executive session immediately following this regular meeting for the purpose of discussing personnel, litigation and real estate matters

An executive session was not required.

Directors' Reports:

Mr. Sims requested an update on the Tree Program for 2009. **Service Director** Christopher Vild reported that he is at the end of the planting season with approximately 150 trees being planted this year slightly exceeding the plan.

Building Commissioner David Menn reported that he received quotes for the cleanup of the house located at 2603 Ashurst Road. The lowest quote was received from The Farrow Group in the amount of \$1,372. Mr. Sims suggested that once the house is cleaned out and inspected and if it is found to be structurally sound that an open house be held to help alleviate the concerns of the neighbors. Mr. Fisher stated that it would be possible after an analysis of the property is made. Mayor Rothschild agreed that an open house could be held.

Mr. Menn also reported that he will meet with a representative of the Cuyahoga Land Bank this week. Mr. Sims recommended that the City apply for funds under the Neighborhood Stabilization Program, for an Exterior Maintenance Program. He added that the program could also go further to address interior improvements. Mr. Sims stated that funds are available up to \$500,000.00, and he suggested that Mr. Menn receive assistance from a grant writer to write a grant proposal and submit it before the June 30, 2009 deadline. Mr. Murphy noted that there are grant writers in community who may assist in this effort. Mayor Rothschild requested that their names be submitted.

Committee Reports:

Building Committee Chairman Peter Bernardo reported that the committee will be working on a notification to apartment owners regarding rental permits.

Mr. Bernardo inquired if the improvements have been completed at the University Square parking garage. Mr. Ciuni stated that final inspection is scheduled for 10:00 a.m. on Friday, June 19, 2009. He added that depending on what is found at the final inspection, the beam repairs and structural repairs will be completed. After that, the garage would undergo routine maintenance. Mr. Bernardo inquired if the community will be notified that the garage is repaired and structurally safe once the it has passed the final inspection. Mayor Rothschild stated that notification could be made in the newsletter, on the website, to the residents on the email notification list, and on the CityWatch notification system.

Civic Information Committee Chairman Frank Consolo reported that he contacted The Loyola Group at the Mayor's request to facilitate immediate updates to the City's website such as changing the newly revised permit fees. He noted that The Loyola Group contacted Itek, an IT company, to make the updates on an temporary basis and address computer problems that may arise. He added that Clerk of Council Nancy English and Kelly Thomas, a secretary in Administration, will be to trained to make minor updates to the website. Mr. Consolo stated that Itek could give the City a quote based on the number of PC's and servers or on an as needed basis. He recommended that Itek be used on an as needed basis for the immediate future. Mr. Consolo announced that a meeting will be held with The Loyola Group and Itek at 10:30 a.m. on Friday, June 19, 2009 in Council Chambers.

Mr. Sims suggested that the Civic Information Committee consider a long term solution and that they be more diverse in the letting of contracts. He also suggested that the Clerk of Council as well as two other people be trained in making minor updates to the website.

Finance Committee Chairman Steven Sims reported that the Finance Committee met on June 8, 2009.

Governmental Affairs Committee Chairman Kevin Patrick Murphy did not have a report, but he announced that he will be sitting on a panel sponsored by for the League of Women Voters and the Heights Observer to discuss regional reform and local sharing on Wednesday, June 24, 2009 at 7:00 p.m. at the Cleveland Heights-University Heights Public Library on Lee Road.

Recreation Committee Chairman Frankie B. Goldberg reported that a meeting will be scheduled with the pool personnel for a status report of the season. Ms. Goldberg thanked Councilman Bernardo for obtaining a microwave and refrigerator for the pool.

Mr. Consolo mentioned that the East-West High School football game was well attended. He added that many people had never been to University Heights before. Deputy Chief James Rohal stated that the football game went very well. He added that there were no traffic problems or noise complaints reported. Mr. Consolo mentioned that Claver residents mentioned they could not hear the loud speakers during the game. Mr. Bernardo stated that the pep band is what usually generates the noise.

Safety Committee Chairman Steven D. Bullock reported that a Safety Committee meeting is scheduled for 7:00 p.m., Tuesday, June 16, 2009 in Council Chambers.

There being no further business to discuss, the meeting was adjourned.

Mayor Beryl E. Rothschild

Nancy E. English, Clerk of Council