

# RECORD OF PROCEEDINGS

Minutes of

Dublin City Council

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

October 8, 2012

Held

20

Mayor Lecklider called the Monday, October 8, 2012 Regular Meeting of Dublin City Council to order at 6:45 p.m. at the Dublin Municipal Building. Council Members present were Mayor Lecklider, Mrs. Boring, Ms. Chinnici-Zuercher, Mr. Gerber, Mr. Keenan and Mr. Reiner. Vice Mayor Salay was absent (excused) due to a family emergency.

## **ADJOURNMENT TO EXECUTIVE SESSION**

Mayor Lecklider moved to adjourn to executive session to discuss legal matters (to confer with an attorney for the public body concerning disputes involving the public body that are the subject of pending or imminent court action), land acquisition matters (to consider the purchase of property for public purposes), and personnel matters (related to the employment of a public employee or official).

Mr. Gerber seconded the motion.

Vote on the motion: Mayor Lecklider, yes; Mr. Reiner, yes; Mr. Gerber, yes; Mr. Keenan, yes; Mrs. Boring, yes; Ms. Chinnici-Zuercher, yes.

The meeting was reconvened at 7:00 p.m.

## **PLEDGE OF ALLEGIANCE**

Mr. Reiner led the Pledge of Allegiance.

## **ROLL CALL**

Present were Mayor Lecklider, Mrs. Boring, Ms. Chinnici-Zuercher, Mr. Gerber, Mr. Keenan and Mr. Reiner. Vice Mayor Salay was absent (excused).

Staff present were Ms. Grigsby, Mr. Smith, Ms. Mumma, Mr. McDaniel, Chief von Eckartsberg, Mr. Hammersmith, Mr. Langworthy, Mr. Hahn, Mr. Harding, Ms. Puskarcik, Mr. Earman, Ms. Ruwette, Ms. Husak, Ms. Rauch, Ms. Flading, Mr. Thurman, Ms. Kennedy and Ms. Haberkamp.

## **SPECIAL RECOGNITION/PRESENTATIONS**

- Recognition of Detective Scott Davis as FOP/CrimeStoppers Officer of the Month - September 2012

Chief von Eckartsberg presented a commendation to Detective Scott Davis who was recognized recently by the FOP/CrimeStoppers as Officer of the Month for his work on the homicide that occurred in Dublin in February, and his investigative work in the criminal case involving Art Schlichter.

- Recognition of Lt. Steve Farmer – Graduation from FBI National Academy  
Chief von Eckartsberg recognized Lt. Farmer, who recently graduated from the 250<sup>th</sup> session of the FBI National Academy. This is an FBI leadership and management program for law enforcement executives from all over the world. This class included law enforcement people from 49 states and 24 countries.

On behalf of Council, Mayor Lecklider thanked the Police officers for their service and congratulated them on these achievements.

- Report from Dublin Representative to Central Ohio Transit Authority (COTA) Advisory Panel – Ann Bohman

Ann Bohman, recently appointed Dublin representative to the COTA Advisory Panel provided a report to Council. Also present was W. Curtis Stitt, President/CEO of COTA. Ms. Bohman shared information with Council from her first meeting as Dublin representative to the Advisory Panel. (The report was distributed to Council on the dais.) COTA has requested that their organization link be included on the City's website in order to access information regarding the three express bus services operated in Dublin – one cross town and one local. They also asked that she provide information to COTA regarding Dublin events that are open to the general public. COTA would like to have a link included in those announcements and publications

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about transportation to the events. COTA is also willing to provide presentations, display booths, and information for newsletters about their services. She distributed bags of COTA brochures and schedules to Council. She added that many residents are not aware of the COTA Guaranteed Ride Home service. If a citizen registers for the program, takes the bus, and then encounters an emergency situation, COTA will pay four times per year 90 percent of the taxi fee, plus tip, for a citizen to travel home for an emergency situation. This program is sponsored by the Mid-Ohio Regional Planning Commission. This is good information to offer to people who are considering using the COTA bus services. She added that there are buses to OSU home games from the various Park 'n Rides throughout the area.

Curtis Stitt, President/CEO of COTA stated that they are very pleased with Ms. Bohman's appointment to the Advisory Panel. She is very enthusiastic and has many ideas as well as concerns to share. They are certain that she will be a very engaged and important member of the Panel and will serve the Dublin community well.

Mayor Lecklider thanked Ms. Bohman and Mr. Stitt for the update.

## **CITIZEN COMMENTS**

Wallace Maurer, 7451 Dublin Road stated that he is embarrassed to say that he is at times woefully uninformed when entering the voting booth – particularly in a presidential election year with many candidates on the ballot and he is not familiar with all of them. As he has previously referenced, the Project VoteSmart compiles information on the candidates, both incumbents and challengers, throughout the country into a small booklet – Voter Self Defense Manual. The 2012 edition is packed with an enormous amount of information regarding candidates throughout the country. He urges everyone to obtain a copy of this by accessing the [www.votesmart.org](http://www.votesmart.org) website or by calling 1-888-votesmart to obtain a free copy. Also, for those who are interested, he will reschedule the piano concert that he recently cancelled due to illness. He will let everyone know of the time/date/location when it is determined.

Warren Fishman, 8577 Turnberry Court stated that he often receives letters from residents, as he has been involved in the Dublin community for many years. Recently, he forwarded a letter to Council Members that he received from resident Eric Krause. In view of the tone of the letter and the way the message was written, he felt it would be worthwhile for the author himself to present his ideas to Council in person. He has always preached to everyone that Dublin is on the cutting edge and that one only has to look around to see what a great place Dublin is in which to live.

Eric Krause, 8606 Kirkhill Court apologized for the letter he sent to Mr. Fishman, which he was not aware would be forwarded to Council. He thanked Council for allowing him to speak tonight and for the time and energy they invest in the City. He purpose tonight is to present concepts for two outdoor fitness features that would be a great enhancement and of benefit to all Dublin residents. He has a wide range of outdoor activities he engages in, and enjoys helping others participate in those activities. He distributed a summary of his suggestions to Council.

- Dublin has done an excellent job of providing a network of trails, parks and playgrounds for local residents and expanding upon these with additional fitness opportunities would be a smart investment. Unique outdoor recreation ideas will help keep Dublin on the cutting edge.
- The key to encouraging healthy activities and fitness success is making it fun.
- He proposes an outdoor climbing structure, similar to the one in the downtown Scioto Audubon Metro Park. (He shared slides of this structure) People of all ages are using this structure and believe it is a great amenity.
- The downtown Metro Park has been used by many Dublin neighbors, but the travel time makes it prohibitive for regular use. These neighbors have asked why Dublin cannot have something like this more accessible to its residents.

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- The manager on site at the downtown Metro Park has indicated that the goal is to attract young professionals and other age groups to downtown. It has been a major success and is promoted as a reason to live in downtown Columbus. He believes this feature in Dublin would be well utilized and an important feature.
- His second proposal is an obstacle course that promotes fitness for all residents. The course would allow simultaneous use by children and adults of all ages and fitness levels. The obstacle course would be built with elements inspired by nature and would fit well at Glacier Ridge Metro Park. Input from local residents would enhance participation in the course and ensure its success.
- Dublin should work to make "Commit to be fit" a reality – not just a slogan.

In summary, he proposes Council employ the vision and planning necessary to add a climbing structure and an obstacle course in Glacier Ridge Metro Park by partnering with Metro Parks. Area residents support the Metro Parks levies and these improvements would benefit all Dublin residents. He suggests the climbing structure and obstacle course be completed prior to the Presidents Cup in 2013, when visitors from throughout the world will be in Dublin. He offered to take anyone on a tour of the downtown Columbus climbing structure and is willing to volunteer to work with staff to plan and implement these ideas.

Mrs. Boring stated that Mr. Krause's letter indicated that the climbing park in downtown Columbus was too great a distance from Dublin. She clarified that Council was not opposed to the concept of a climbing park, but to the location. With the development of the Bridge Street Corridor and the emphasis on a walkable community, perhaps the location of a climbing structure could be revisited so that people could walk to the park – not drive.

Mr. Krause responded that having this structure in the core of Dublin is a wonderful idea. The reason he did not suggest this was because municipalities often have liability concerns with such structures. Metro Parks have been able to assume this risk, as evidenced in the downtown Columbus park, and they are willing to partner on these amenities. Personally, he would prefer that the climbing structure be located in the City of Dublin for reasons of accessibility by walking or by bicycle. But Dublin has done an excellent job in building trails to the Glacier Ridge Metro Park system, which is one reason he suggested this location.

Ms. Chinnici-Zuercher agreed with Mrs. Boring about the misinterpretation of Council's previous comments. She believed the idea was worthwhile, but the location was not appropriate. Glacier Ridge is a fabulous passive park and she frequents it regularly. Perhaps this matter could be referred to Mr. Hahn and the Parks and Recreation Advisory Commission for further study. There has been discussion of revisiting the skate park location, and perhaps these concepts could be considered at the same time – whether with the expansion of Coffman Park or parkland along the river in the Bridge Street Corridor. These are two great ideas, and there may be others that should be considered going forward.

Mayor Lecklider asked who monitors the climbing activity at the Audubon Metro Park. Mr. Krause responded that he frequents this throughout the week. There is a form that is supposed to be signed by users, but Metro Parks indicates that because this is a free recreational activity, they don't have liability issues. Only on weekends when it is busy has he observed rangers occasionally stopping patrons who are engaged in dangerous moves. Most of the time, the venue is self policed by various people. There is a camaraderie and help available to those who ask for it. There are a wide variety of age groups using the structure.

Mr. Keenan asked if there are lines, and if this is freeform climbing.

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Mr. Krause responded that the rules indicate a user can climb up to 12 feet without ropes. Above that, one must be roped in and demonstrate their abilities to a ranger. Occasionally, there are public programs offered, which fill up three months in advance. Mr. Keenan asked about the cost of construction of the climbing structure. Mr. Krause responded that his understanding is that it was built in Boston, and the structure itself costs \$800,000 with surrounding mats and fixtures at a cost of \$200,000.

Ms. Grigsby stated that she, Mr. Hahn and Ms. Crandall are meeting with John O'Meara of Metro Parks this week for updates on the park as well as any options for potential enhancements, such as outdoor workout stations. In regard to the skate park and potential relocation, this is programmed in the CIP for 2014 for review. Staff can review some potential options and provide information to Council.

Mrs. Boring stated that there is a Master Plan for Coffman Park, but the focus is now on a healthy, fit Dublin. Perhaps a plan update process for Coffman Park should be undertaken to review some of the Bridge Street Corridor options. Ms. Grigsby responded that staff can review this. Much of the programming for work to be completed next year and the following year is based on the existing Coffman Park plan. She is aware that boards and commissions are reviewing their Items of Interest for 2013, so perhaps PRAC could consider pursuing this item.

Mayor Lecklider stated that in the 1970s, he attended an Outward Bound school in western North Carolina and engaged in some intense mountain climbing and rappelling. Closer to home, there is some very good climbing in the Seneca Rocks region of West Virginia.

Mr. Krause added that he spoke today to the General Manager of the Scioto Audubon Park who is very excited that the Rotary Club is pulling together resources for a fabulous obstacle course that will open in the spring.

Mr. Keenan suggested that Legal staff and Risk Management provide input on the liability issues associated with having a climbing structure.

Mr. Reiner thanked Mr. Krause for bringing this forward. Mr. O'Meara had indicated that Glacier Ridge could use an additional feature. Given that Dublin residents voted for the Metro Park levy, it is important to continue with enhancements to the Glacier Ridge Metro Park. The concept of something down by the river in the Bridge Street Corridor is of interest and would be a great amenity to draw people into the area. But given the expense, he would be interested in pursuing a partnership with Metro Parks to have this added at Glacier Ridge.

Ms. Grigsby noted that the City did contribute and continues to contribute to the land acquisition for the Glacier Ridge Metro Park. Annual payments through 2017 total \$7.7 million for acquisition of the land. The City recognizes the importance of the Metro Park and has invested heavily in the land.

Mr. Reiner stated he would also be open to the idea of having such a facility in the central part of the City.

Ms. Chinnici-Zuercher stated that Dublin has a history of citizens coming forward with outstanding ideas, and these citizens are generally very involved in the projects. The Miracle League is a great example of this practice, and it involved fundraising by the private sector to partner with the City.

## **CONSENT AGENDA**

Mayor Lecklider noted that eight items are proposed for action on the consent agenda. He asked whether any Council Member requests removal of an item for further consideration under the regular agenda.

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Mr. Keenan asked for clarification regarding whether it is appropriate for him to abstain from the item related to the Rusty Bucket.

Mr. Smith responded that is not necessary.

Hearing no objections, Mayor Lecklider moved approval of actions requested for the eight items as proposed on the consent agenda.

Mr. Gerber seconded the motion.

Vote on the motion: Mr. Reiner, yes; Mr. Keenan, yes; Ms. Chinnici-Zuercher, yes; Mrs. Boring, yes; Mr. Gerber, yes; Mayor Lecklider, yes.

1. Acceptance of Minutes of September 24, 2012 Council meeting
2. Notice to Legislative Authority re New D5 liquor permit for Calimira LLC dba Rusty Bucket Corner Tavern, 6726 Perimeter Loop Road, Dublin, OH 43017
3. Notice to Legislative Authority re New D5I liquor permit for THG Corazon LLC, 7155 Corazon Drive, Dublin, OH 43017
4. **Ordinance 62-12 (Introduction/first reading)**  
Authorizing the City Manager to Enter into a Contract for Health Services with the Franklin County Board of Health for 2013. (Second reading/public hearing October 22 Council meeting)
5. **Resolution 58-12 (Introduction/vote)**  
Memorializing the Execution of a Six-Inch Water Main Easement Granted to the City by the Muirfield Village Golf Club.
6. **Resolution 59-12 (Introduction/vote)**  
Accepting the Lowest/Best Bid for the 2012 Sanitary Sewer Manhole Rehabilitation Project. (Project No. 12-016-CIP)
7. **Resolution 60-12 (Introduction/vote)**  
Authorizing the City Manager to Enter into an Agreement with the Franklin County Sheriff's Office to Participate in the 2013 Franklin County DUI Task Force.
8. Acceptance of Final Plat - Ballantrae, Section 9, Phase 1

## **POSTPONED LEGISLATION**

### **Resolution 57-12**

#### **Authorizing the City Manager to Enter into an Agreement with the Dublin Arts Council for the Provision of Cultural Arts Services and Amending Exhibit "B" of the Lease Agreement Previously Executed by the Parties.**

Ms. Grigsby stated that the staff memo identifies an additional edit requested by the Dublin Arts Council. This has been included in the revised agreement. The corrections to references in the agreement that were identified by the Mayor at the last meeting have also been incorporated. Earlier today, she received an e-mail from Mr. Guion, indicating that the Board of Directors of DAC had approved the agreement. Staff recommends adoption at this time.

Mr. Reiner, DAC representative stated that he is pleased that this is being concluded.

Mr. Maurer, 7451 Dublin Road noted that he has two minor corrections to the document. In Exhibit A, Page 3, Section 7, 2<sup>nd</sup> paragraph, it should state, DAC will also provide grant opportunities for Dublin-based community nonprofit arts organizations and schools and will offer recreational, artistic and cultural programs. On page 5 of the agreement, Section 19, it should state, "This Agreement may be amended only by the legislative authority of the City ..."

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Ms. Grigsby accepted these corrections and indicated they will be made prior to execution.

Mrs. Boring suggested that it would be helpful if Mr. Maurer would notify the Clerk of any corrections to documents in advance of the meeting.

Vote on the Resolution: Mrs. Boring, yes; Mr. Gerber, yes; Mr. Reiner, yes; Ms. Chinnici-Zuercher, yes; Mr. Keenan, yes; Mayor Lecklider, yes.

## **SECOND READING/PUBLIC HEARING – ORDINANCES**

### **Ordinance 60-12**

#### **Authorizing the Vacation of a Portion of an Existing Bikepath Easement Granted to the City by Four Fives LLC.**

Mr. Hammersmith stated that in September, the Standley Law Offices provided a shared use path easement for the path to be constructed on Martin Road. The easement included both a temporary easement and a proposed permanent easement. Standley Law Offices originally donated a permanent easement in 2007 when their facility was constructed, and they donated what the City requested for a path. Part of the discussion with them was having the City vacate a portion of the existing easement in tradeoff of the additional area they gave to the City, as shown on the exhibits. Staff recommends approval of the ordinance, vacating a portion of the easement.

Vote on the Ordinance: Ms. Chinnici-Zuercher, yes; Mrs. Boring, yes; Mr. Reiner, yes; Mayor Lecklider, yes; Mr. Gerber, yes; Mr. Keenan, yes.

### **Ordinance 61-12**

#### **Authorizing the City Manager to Execute Necessary Conveyance Documentation to Acquire a 0.135 Acres, More or Less, Fee Simple Interest (With 0.082 Acres as Present Road Occupied), a 0.086 Acres, More or Less, Fee Simple Interest, and a 0.046 Acres, More or Less, Temporary Construction Easement from Jubilee LP.**

Mr. Hammersmith noted this is a land acquisition related to Emerald Parkway Phase 8 construction. Jubilee owns two properties on the north side of Bright Road, east of where Emerald Parkway will intersect with Bright Road. He shared a map of the subject parcels and the general vicinity. As outlined in the staff report, the City provided compensation in the amount of 10 percent over the appraised value. The total amount to be provided to the property owner is \$12,870.00. Staff recommends approval of the ordinance.

Vote on the Ordinance: Mr. Reiner, yes; Mr. Keenan, yes; Mr. Gerber, yes; Mrs. Boring, yes; Mayor Lecklider, yes; Ms. Chinnici-Zuercher, yes.

## **INTRODUCTION/FIRST READING – ORDINANCES**

### **Ordinance 63-12**

#### **Rezoning Approximately 1.35 acres Located on the Southwest Corner of Dale Drive and West Dublin-Granville Road from BSC-C, Bridge Street Corridor Commercial District to CC, Community Commercial District to Facilitate the Development of an Approximately 3,800-Square-Foot Restaurant.** (Case 12-053Z -- The Wendy's Company – Restaurant and Drive-Thru)

Mr. Gerber introduced the ordinance.

Mr. Langworthy stated the proposed rezoning is for land located at 4555 West Dublin-Granville Road from BSC Commercial to CC Community Commercial.

- The site is located at the corner of Dale and W. Dublin-Granville Road and consists of the out lot remaining from the development of the Shoppes at River Ridge. The site is just over 1.3 acres and is adjacent to the existing Wendy's restaurant on Riverside Drive, just down the hill. He shared a site map.
- Wendy's has acquired a parking easement and cross-access agreement with Montgomery Inn and the rest of the shopping center to use a portion of their parking area.

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- The Community Plan shows this as general commercial, surrounded by general commercial with the Shoppes at River Ridge. The area plan shows development of the out lots at the Shoppes at River Ridge.
- The Bridge Street Vision Plan shows this as office and loft apartment use. However, during the area rezoning, Council rezoned the area into the commercial district, to allow commercial uses to continue along SR 161.
- The current zoning of the property is BSC Commercial, as well as the entire River Ridge shopping center down to Shamrock Boulevard, and across the street at Bridge Pointe.
- This application was recently reviewed by the Board of Zoning Appeals for sign and parking variances. Wendy's received approval for a combination of wall signs and ground signs, which they would have been permitted under the BSC Commercial. This application was processed under the Community Commercial district in anticipation of the rezoning. They were also permitted two wall signs, which also would be permitted, and they had variances on both the wall sign height as well as a logo size. They also received approval for a ground sign.
- Three additional wall signs were disapproved by the BZA, as well as the directional sign that included advertising and exceeded the height allowance by the Code.
- Parking variances submitted and approved were for the required number of spaces by means of an agreement with the rest of the shopping center. The parking space size was slightly reduced for the angle-sized spaces and this was approved by the BZA.
- In terms of development requirements for Community Commercial district and the zoning background, the previous zoning prior to BSC was also Community Commercial with a Corridor Development District review process. The current zoning is BSC Commercial and the proposed rezoning is to Community Commercial.
- In terms of development requirements for Community Commercial, the lot and yard requirements are fairly minimal. Landscaping would have to meet the Zoning Code requirements. Signs and parking are approved by the BZA. Parking lot landscaping and screening would be per the Zoning Code requirements.
- After the rezoning, additional P&Z approvals would be required for the patio and the drive-through window. Those are currently scheduled, pending the outcome of the zoning request.
- He compared the uses permitted in the current rezoning versus the proposed rezoning. The BSC Commercial collapsed some of the uses that the current Zoning Code splits into different categories and specifics. He displayed a slide that indicates the uses permitted in each district.
- The Planning & Zoning Commission recommended disapproval of the rezoning, and much of their decision related to the permitted uses. The Commission felt that some of the uses would not be appropriate in this location. After the vote, staff met with Wendy's representatives and worked out an agreement to address the concerns expressed by the Commission. The proposed development agreement would limit the uses to retail stores, administrative business and professional offices, and personal and consumer services. A list of uses not permitted includes auto sales, building material sales, sexually oriented business establishments, and all conditional uses – with the exception of patios and drive-thru windows. Wendy's has agreed to put this limitation on the property in the form of a development agreement.
- In addition, Wendy's has agreed that a development process for future structures not undertaken by Wendy's will require a review equivalent of the final development plan, using the final development plan process – which is done by the P&Z. This draft agreement was completed late last week, and

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copies will be provided to Council prior to second reading. The draft was written by Dublin's legal department and submitted to Wendy's for their review. Planning recommends approval of the rezoning and believes the major objections of the Commission have been addressed through the development agreement process. He noted that Dennis Hill, Vice President Real Estate, The Wendy's Company is present to respond to questions.

Mrs. Boring asked if the variances granted by BZA relate to signs that will run with the property.

Mr. Smith responded that the sign variances are fairly specific to the architecture of the building. He believes that a future development would not be able to utilize those variances. However, the parking variances would probably stand, assuming the agreement for parking runs with the land.

Mrs. Boring stated that she does not understand how variances granted by BZA would not carry forward should the property change owners.

Mr. Langworthy responded they are not automatically negated, as they often run with the land. But the variances are specific in terms of numbers, height, logo and sizes of signs and it seems unlikely they would stand with a new building.

Mr. Smith agreed, adding that the development agreement indicates that a Wendy's store or a remodeled Wendy's store would carry the same variances. If it were demolished or another development brought forward, they have to go through a development review process. The variances are tied to the signage for the Wendy's store and would not work for another user. They run with the property, but would only work with an identical restaurant with identical logos in size. Staff believes the development agreement, to be brought forward at the time of the second reading, will address all of these contingencies.

Mr. Gerber stated that he reviewed the PZC minutes. He assumes the applicant opted out of the Bridge Street District and chose this route. Was the applicant persuaded to take this route? What is the history of this?

Mr. Langworthy explained that staff provides applicants with all options available to them, as well as the timeframe and processes involved. Wendy's elected to apply for a standard zoning district and to pursue the necessary variances associated with standard zoning districts.

Mr. Gerber stated that the minutes indicate that the PZC Chair said it was unfortunate the Commission was in such a position with this rezoning, as they were attempting to have discussion regarding some waivers. He asked for clarification.

Mr. Langworthy responded that staff analyzed the proposal and determined there would be a significant number of waivers needed. If an applicant cannot meet the requirements of the Bridge Street District regulations, there is a process available to request waivers from those individual requirements. That process requires review by the PZC, according to standards listed in the Code. Those standards are reviewed against those individual waivers and then the PZC decides which of those waivers should or should not be approved. There was a very extensive list of waivers for this application, and it seemed impractical to take it through this process and to have the PZC vote on each waiver. Staff did not believe that many of the waivers would be justified under the Bridge Street District regulations.

Mr. Gerber asked what type of waiver would be requested from PZC for this project.

Mr. Langworthy responded that the major ones related to location of the building. The building would have had to occupy a portion of the front property line and would have been required to be located up in the corner of the site, complicating the drive-through arrangement for Wendy's. This store is intended to be a flagship store where Wendy's can bring franchisees from around the country to view operations. Building it in accordance with Bridge Street District regulations would not have allowed it to function in that way.

Mr. Gerber stated that he was somewhat confused with the comments by PZC that they did not know how to handle the waivers. He thought the Bridge Street Code as

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adopted provided for these waivers that would be heard by PZC. He is trying to understand what the PZC's main objection was to this rezoning.

Mr. Langworthy responded that some of this is general, and not specifically related to this development. It involves situations where some things should be zoned out of the Bridge Street Corridor district and when things should be left in. This will require further clarification going forward, based on experience.

Mr. Gerber stated that he was under the impression when this BSC Code was adopted that the applicant had an option of filing under the form-based Code or to opt for a PUD or another zoning district.

Mr. Langworthy stated that is correct. It is the applicant's decision of how they want to proceed with their application.

Mrs. Boring stated that some of these issues may be appropriate for discussion at a future joint meeting.

Mr. Gerber responded he is not opposed to having meetings with PZC, but if the Commission wants to take on projects, work with staff to develop recommendations for Council, he would support that. He is not interested in regular roundtable discussions with advisory boards and commissions.

Mayor Lecklider stated that in this situation, there were multiple options available to the applicant. Perhaps some PZC members did not favor this option, but the process did allow the applicant to pursue that option.

Mr. Langworthy noted that, as reflected in the PZC minutes, the Commission did not have particular objections to Wendy's plan, per se; it was a matter of how it would be achieved. For this reason, staff proposed a development agreement to address the concerns about uses and process, should Wendy's vacate at a future time.

Mrs. Boring stated that if an applicant wants to come in under the Bridge Street Code and it requires 40 waivers, it would likely be prudent to encourage them to choose another route. The issue seems to be whether there are a maximum number of waivers that should be considered. This is a part of the process and P&Z seems to be working through it.

Mr. Langworthy stated that it may be difficult to come up with a static policy to address all circumstances. Often, it is case by case, based on individual circumstances and the nature of the waivers.

Mr. Gerber stated that he assumes that the option the applicant chose likely provides them, in the applicant's opinion, with the most certainty about the outcome.

Mr. Langworthy agreed, noting that the timeframe was a factor as well.

Mr. Gerber commented that the City's policy is certainly that applicants should be able to move more quickly through the process, while maintaining a strong critique and thorough review of the application.

Mr. Langworthy commented that this particular site continues a development pattern already established by the Shoppes at River Ridge. Had this site been an isolated site, the view of staff about taking it out of the Bridge Street Corridor District may have been different.

Mr. Gerber stated that the presentation indicated that PZC would still review the conditional uses related to the patio and the drive-through. Outside of that, if this rezoning is approved, the review will be conducted by staff. What are the criteria that staff will apply for the development?

Mr. Langworthy responded that it is a Community Commercial zoning, and the review criteria includes the standard landscaping requirements, lighting requirements, parking and screening requirements, etc.

Mr. Gerber noted that he recalls from his service on P&Z that a criteria for rezoning is that it be compatible with surrounding uses and in harmony with what exists around it.

Mr. Keenan noted that a PZC member asked about the drive-through facilities. Were any lessons learned from the Kroger Center with respect to how this is designed?

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Mr. Langworthy responded affirmatively, noting that staff has reviewed the stacking capacity, which is well beyond what the Code requires. Mayor Lecklider added that in the Kroger development, there were some other traffic conflicts on the site due to other restaurants. Mr. Keenan stated he is hopeful that the Kroger situation will be addressed with improvements promised with the roundabout.

Dennis Hill, Vice President Real Estate, The Wendy's Company stated that they appreciate Council's consideration of the rezoning proposal. They have worked with City staff over several months to accomplish this. After thorough review, they have filed for a Community Commercial rezoning for the site. They were somewhat surprised with the Planning & Zoning Commission's objections, but the Commission's objections were generally related to the path chosen for the rezoning versus the development proposal itself. They are willing to offer a development agreement as a means to satisfy any concerns noted, and they believe what they are offering will accomplish that. They agree with the recommendation of the Planning staff. He noted that a Wendy's restaurant has existed in this location for 35 years. This development is really a continuation of the use at the corner to the adjoining property. In addition, freeing up the existing property will help with the City's future roundabout construction. They are proposing to transfer the existing use from one location to the adjacent location. They look forward to being at this location for many years. This restaurant will be a flagship store for Wendy's, with investors and franchisees from around the world who come to headquarters to view the restaurant locations in the surrounding area. They would like to keep these visitors in Dublin, close to headquarters, by means of this flagship store development. This development will have high quality architecture, and they have submitted the building elevations to the City, together with complete landscape plans. As part of this facility, there will be a community room. Artifacts from the museum that were formerly housed at the headquarters, including the Olympic torch that Dave Thomas carried through Dublin will be housed at this new facility. They are seeking Dublin's approval and cooperation in helping this to be developed in Dublin.

Mayor Lecklider noted he is looking forward to the public access to view artifacts, which were at one time displayed at the original Broad Street store in downtown Columbus. This will be an enjoyable aspect for residents and visitors to Dublin. He noted that Council is appreciative of Wendy's patience with the process, as the Bridge Street Corridor District is a new endeavor for the City. From the P&Z minutes, it seems their concerns are with the methodology for the development process and not the outcome.

Wallace Maurer, 7451 Dublin Road stated that the crux for him is the differences between the zoning categories. He will contact staff so that he has a better understanding of these differences prior to the public hearing. What struck him from the P&Z minutes is a comment that the rezoning will create a precedent that will "open the floodgates" to innumerable enterprises. For this reason, he wants a better understanding of the differences in the zoning categories.

There will be a second reading/public hearing at the October 22 Council meeting.

## OTHER

- Request for Fee Waiver for Administrative Appeal - 4056 West Dublin Granville Road – Dr. Sudhir Jindal

Ms. Flading stated that the applicant is pursuing an administrative appeal through the Board of Zoning Appeals and is requesting a fee waiver from Council for the application fee for the appeal.

- The site is zoned BSC Office, which allows for a mixture of uses, predominantly in the office categories. The applicant currently has a residential use and is

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appealing a decision from staff regarding whether the residential use is appropriate on the site or permitted on the site.

- The applicant's request is based on two issues, one of which is under what process the application will be reviewed. Under the current Zoning Code, there are two provisions for review of land use decisions – one under "Non Conforming Uses" and one under the Bridge Street Code. Currently, there is not an application fee in place for the non conforming uses review.
- Staff has reviewed the application and determined that, because of its location in the Bridge Street Corridor, the non conforming uses issue is not relevant to the application. In fact, the application fee under the Bridge Street Code is the appropriate fee. As a clerical matter, staff is rectifying the issue of non conforming uses and the fact that there is not an appropriate fee in place. When the fee structure is next reviewed, the issue will be corrected. There are currently fees in place for all application processes, including Bridge Street.
- The second part of the applicant's request, as outlined in his letter to Council, is his assessment that a use determination is not an extensive review process as the process for other applications before the BZA. Staff's analysis is very complete, and in fact more cumbersome for a use determination. Therefore, the same amount or an even higher amount are required for this review by staff.
- Based on these factors, staff recommends that the fee be implemented for this application process in order for the appeal to proceed to the BZA.

Ms. Chinnici-Zuercher asked for clarification. She recalls the site was rezoned previously, and the plans called for commercial use. What then transpired, as she understands, is that, once the new rezoning is effective, the property cannot be used in the future for the use permitted under the previous zoning, if the property has not been continually used as that original use. While it was a residential home, no one lived in the property for a significant period of time.

Ms. Flading responded that is correct. An applicant must prove that for a period of time, the property was used for a residence. Under the Bridge Street Code, that period of time is 12 months. The burden to prove this is the applicant's responsibility.

Ms. Chinnici-Zuercher stated that the applicant then moved someone into the home, to use it as a residence and received a Code violation notice from the City. The applicant is now seeking approval from BZA to use this property as a residential home.

Ms. Flading confirmed this is correct.

Mrs. Boring stated that she recalls a previous rezoning request for this property.

Ms. Flading responded that a couple of years ago, the applicant pursued a Planned Unit Development for an office use for the site and it was approved in December of 2010. The final development plan application was not completed, and has been inactive for a period of six months. In the meantime, the site was zoned as part of the area rezoning for the Bridge Street Corridor, and so it transitioned to a Bridge Street District zoning.

Mrs. Boring asked if anyone lived in the house during all of this time.

Ms. Flading responded that the house had been in disrepair up until early 2012, when the applicant began working on it in order to have a tenant in the house. A couple of months ago, a family moved into the house and began using it as a residential structure.

Mrs. Boring asked for confirmation of the notification to the property owner regarding the Bridge Street rezoning.

Ms. Flading responded that he was notified and there were several discussions with him about the Bridge Street rezoning during the process.

Mayor Lecklider stated that long-term, based on the rezonings, the City does not desire residential use in this location, correct?

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Ms. Flading responded that is correct. This area is clearly transitioning to office/commercial uses along the corridor.

Mayor Lecklider asked if residential is a potential use in the interim.

Ms. Flading responded that staff made the determination that, under the Bridge Street Corridor Office, a residential use is not a permitted use. The applicant is appealing the decision to BZA, and believes he is entitled to a residential use on this property.

Ms. Chinnici-Zuercher stated that prior to the City's Bridge Street Code rezoning, the applicant had sought and received approval of a rezoning to a PUD. In that rezoning, was residential use permitted?

Ms. Flading responded it was not.

Ms. Chinnici-Zuercher stated that in either case, the residential use is not permitted.

Mr. Gerber asked if the residential use is therefore deemed to be a non conforming use.

Ms. Flading responded that is the question that staff faced. There are two sections of the Zoning Code that address use determinations – the first is non conforming uses; the second is a specific section in the Bridge Street Code that references an existing use. It requires that an applicant who does not conform to the Bridge Street Code has the responsibility of proving that a use that would have been a permitted use under the previous zoning district was in place for 12 months. Therefore, if the previous zoning district allowed for residential use, it would have to have been in place for 12 months prior to the Bridge Street rezoning. Those are the two issues the applicant will have to address in his appeal.

Mr. Gerber asked if the applicant abandoned the rezoning previously approved, and if the property was maintained as a residential use, could it then be utilized as a residential property?

Ms. Flading responded that is another part of the application process that the BZA will have to review. There are several instances where there are rights to proceed --in this instance, with a residential use. Abandonment would constitute a right to proceed. There are actually four criteria in total related to rights to proceed.

Mr. Gerber stated that she mentioned that staff is considering an additional fee for non conforming uses. He asked for clarification.

Ms. Flading responded that this is a clerical issue. There are fees in place for all application processes. The last applicant who sought a use determination was over a year ago. Because the fee structure does not specifically list non conforming use determinations, the Law Director's office has advised that the City cannot accept a fee for a service that does not exist. Staff's intent is to update the fees in the upcoming cost study review process, in order to add a fee specifically for non conforming use determinations.

Mr. Gerber stated that if there is no fee established for this review, and if the applicant is requesting a waiver from this fee, under what classification is this fee?

Ms. Flading responded that the waiver relates to the existing use section under the Bridge Street Code. Staff believes this is applicable, as the property is located in the Bridge Street District.

Mr. Gerber commented that is not what the applicant is requesting, however.

Ms. Flading responded that she is attempting to explain staff's logic for applying the Bridge Street Code existing use section.

Mr. Langworthy added that the non conforming use portion no longer applies in the Bridge Street District. That provision applies only outside the Bridge Street District. Inside the Bridge Street District, the applicable provision is existing use. This is reviewed at the administrative level, not at the Board of Zoning Appeals, and therefore does not need a fee. The administrative appeal is to staff's decision that it was an abandoned existing use.

Mr. Gerber stated that the applicant's argument on appeal would be that he abandoned the rezoning and that he clearly intended for this to be residential.

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Mrs. Boring stated that there was a rezoning in place for a PUD, yet now the applicant is indicating he intended it to be residential.

Mr. Gerber responded he is merely trying to understand how this came about.

Mayor Lecklider invited the applicant to provide testimony.

Dr. Sudhir Jindal, accompanied by his wife, Aleha Jindal, owners of 4056 West Dublin-Granville Road stated that the intention is not to keep this property as residential, but only to keep it residential until they are ready to build. For reasons associated with the economy, it required much longer to secure the rezoning. In the meantime, he had costs related to attorneys and two architects and did not have the funds to continue with the project. There was a break-in at the house in February. He was doing repairs at the house, as he had understood previously that it could be maintained as a house into the future. There is an adjacent residential property, which is also zoned PUD as well as Bridge Street Corridor zoning. For these reasons, he believed he could maintain the property as residential until he was ready to build the new building on the site. In the process, he contacted the City and was told there was no need for permits as the changes he was making were cosmetic. They invested monies into the property so that someone could live in it versus having the property unoccupied. The structure has never been abandoned; it has always been maintained. He has maintained the lawn, and has done repairs himself as he could make the time. The work on the house required longer than expected. In February, he hired help to assist with the repairs, and then rented it, as he understood he could continue the residential use until such time as he built the new building. He was told that as long as he did not demolish more than 50 percent of the building, it could remain as an existing structure for use.

Ms. Flading responded that the 50 percent would be for the structure. Non conforming can apply to a structure, a lot, or a use. He is referring to a non conforming structure – not the requirement for an existing use. Clearly, staff has been in discussion with Dr. Jindal throughout the Bridge Street Corridor process. It is somewhat complicated, but staff believes they were clear that the use itself will transition to an Office use.

Dr. Jindal added that he spoke to two senior staff members who indicated there was no fee for this appeal. For this reason, he is requesting the waiver from Council. The staff members also indicated the fee is not intended for such a small parcel, but for larger parcels and properties. He does not have plans that need to be reviewed for this appeal, so it will not require much time for staff review.

Mayor Lecklider stated that he does not believe the fee structure is based upon the size of the parcel in question. The more fundamental problem is that the property has not been utilized for a residential use for more than 12 months. The property adjacent to this has been continuously used as residential, and for that reason is distinct from the subject property. The applicant began to develop this in a different manner – not residential – and is now trying to go back in time. The problem is that 12 months have passed, and that use cannot be recaptured.

Dr. Jindal responded that what he is requesting is that he be allowed to use the property until such time as he is able to rebuild it. The appearance of this house over the past six months has improved, with a new roof, paint, etc. Before undertaking the renovations, he was told by the City that he could do so, as long as these were only cosmetic changes. He believes he has been misled by the staff regarding the fees and the ability to make cosmetic changes, and is therefore seeking relief from Council.

Mayor Lecklider stated that, to the extent he understands, whether or not there is a fee charged, what he is hearing is that this appeal is not likely to be approved. It is unfortunate that Dr. Jindal has gone to the trouble and expense with these renovations, but the Code would require the property be maintained to a certain standard or risk being condemned. What he is hearing is that the applicant is not likely to have his appeal regarding residential use of this property approved by the BZA.

Ms. Flading concurred.

Mr. Smith clarified that this property was rezoned by Council in 2010. The applicant did not complete the final development process after that rezoning action. The

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applicant was involved in the Bridge Street Corridor process and was notified of the rezoning. Therefore, the property is currently under the BSC Office rezoning category. Legal staff's determination was that the choice staff made to have the appeal run under the Existing Use provision of the Bridge Street Code was appropriate. Whether or not Council grants a fee waiver is a separate issue from the BZA's review of the appeal.

Mr. Gerber stated that the applicant has testified that he contacted staff who told him he could proceed with the cosmetic improvements to the house. Was there paperwork filed with the City for this purpose?

Dr. Jindal responded there was no need for paperwork, as no permits were required for the roof, changing out cabinets, and changing the door. He did check with the Building Department as well on these items.

Mr. Langworthy clarified that the response one receives is dictated by the question asked. The question Dr. Jindal asked was about the building. He has rights to maintain the building by fixing the roof, doors, etc., so that it does not deteriorate. The use of the building itself is separate, and different rules are applicable. He was never told that he could continue the residential use, but only that he could do what was necessary to maintain the building.

Mrs. Boring asked what type of remodeling triggers the need for permits.

Mr. Langworthy responded that there are permits needed for some alterations and those that involve electrical work or plumbing work, such as water heater replacement.

Mrs. Boring asked Dr. Jindal if he installed a new water heater.

Dr. Jindal stated that he did not. This house was never abandoned, and the utility services were connected to it.

Mr. Langworthy stated that these are issues that will ultimately be determined by the Board of Zoning Appeals.

Mr. Gerber stated that Council cannot resolve these issues tonight.

Mayor Lecklider stated that, from Dr. Jindal's perspective, he faces some unfortunate circumstances, but does have some options.

Dr. Jindal indicated that options were provided to him by various people, but he respectfully requests at this time that Council waive the fees, based upon the information he was given by the Dublin staff and that he relied upon.

Ms. Chinnici-Zuercher noted that she had discussions with Dr. Jindal and with Mr. McDaniel about this matter. Mr. McDaniel indicated that Dr. Jindal was told by staff that there would be no fee. This is a separate issue from those to be decided by BZA. If citizens ask questions and receive and rely upon the wrong information, who has responsibility for the consequences?

Ms. Grigsby responded that her understanding is that the first call related to a fee and he was told there was not a fee involved. Staff then called Dr. Jindal back to notify him that there was a fee for this appeal. He then had the opportunity to decide whether or not to pursue an appeal with the knowledge that there was a fee involved.

Ms. Chinnici-Zuercher asked Dr. Jindal if he received a second call from staff about this matter.

Dr. Jindal reviewed his notes. He indicated that he received a notice, spoke to a person in the office who indicated there were no fees involved for an appeal. He went to file an appeal and was told that there was no fee and that no new evidence can be introduced at the appeal hearing. He was given an extension on the appeal because he was continuing to work on the house. On September 4, he submitted the application and on September 10, he received an e-mail indicating the application was complete, but that he needed to submit a fee of \$1,280. Three weeks prior, he was told there was no fee, but was then told there was a fee of \$1,280 without any explanation. He was then told he could request a fee waiver from City Council.

Ms. Chinnici-Zuercher asked what timeframe was involved in the staff correcting their original error.

Ms. Flading stated that Dr. Jindal came to the office and applied for the application, indicating he had previously talked to staff about a non conforming use determination.

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She indicated to him that if it is a non conforming use determination, there is no fee. Every application reviewed is done by staff as a group and exact comments were reviewed as a staff. There were a couple of days required for staff to meet collectively to review this. Immediately, staff then contacted Dr. Jindal and said it would be reviewed under the Bridge Street Code. For clarification, this was the same information he was given months prior. Staff makes every effort to give applicants all the information available.

Mayor Lecklider stated that his understanding is that the hardship, if any, that existed for Dr. Jindal was for a couple of days. Dr. Jindal is suggesting to Council that he relied upon the information received from staff, and as a result went to some trouble and expense.

Ms. Flading responded that she is not certain when he talked to other staff members, but it was a short amount of time between when the application was discussed and when he actually filed – perhaps a couple of weeks. In that time, the predominant conversation related to what needed to be submitted for the application process.

Ms. Chinnici-Zuercher clarified her understanding for the record – this occurred long after Dr. Jindal had spent money on the new roof and clean-up of the property. All of that work was done in the summer, and after that was done and someone moved into the home, staff then cited him for a Code violation for using it as a residential property. Dr. Jindal actually incurred costs before the City ever knew he was going to use it as a residential property. He was cited and then applied for the appeal, and was told within a couple of days about the fee for the appeal.

Mr. Gerber stated that he understands that the fee waiver requested tonight may not be the fee waiver needed once staff reviews and establishes a non conforming fee in the schedule.

Ms. Flading responded that there is not necessarily a correlation. However, the fee will always be in place for the Bridge Street Code.

Mr. Gerber asked for confirmation that the fee will be \$1,270, regardless of what the determination is.

Mr. Langworthy responded that this application is for an administrative appeal, which has no relation to the non conforming use or existing use determination. That fee stays the same.

Dr. Jindal added that the appeal was always categorized as an administrative appeal. First, he was given the fee of \$1,280 and then \$1,270. It required several e-mails to verify the amount.

Mayor Lecklider requested a motion from the floor.

Mr. Gerber moved approval of the \$1,270 fee waiver as requested.

Mrs. Boring seconded the motion.

Vote on the motion: Mrs. Boring, yes; Mr. Reiner, yes; Mr. Gerber, yes; Mr. Keenan, yes; Ms. Chinnici-Zuercher, yes; Mayor Lecklider, yes.

## STAFF COMMENTS

There were no comments from staff.

## COUNCIL COMMITTEE REPORTS/COUNCIL ROUNDTABLE

- Acceptance of 2011 Audit Report

Ms. Chinnici-Zuercher, Finance Committee Chair reported that the Committee met this evening and that the City's financial position is excellent. The Committee also reviewed the 2011 Audit Report, which was accompanied by a "Letter to Management" that included no findings. The Committee requests that Council formally accept the 2011 Audit Report as submitted to the Finance Committee.

Ms. Chinnici-Zuercher moved acceptance of the 2011 Audit Report.

Mr. Gerber seconded the motion.

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Vote on the motion: Mr. Reiner, yes; Mayor Lecklider, yes; Mrs. Boring, yes; Mr. Gerber, yes; Ms. Chinnici-Zuercher, yes; Mr. Keenan, yes.

Mr. Reiner, Community Development Committee Chair reported that Glenbarr at Muirfield Homeowners Association has requested a one-year extension of their previously approved grant. They had some unanticipated expenses related to storm damage that precluded progress on their entry signage project.

Mr. Reiner moved to approve a one-year extension of the Beautify your Neighborhood grant for Glenbarr at Muirfield.

Mrs. Boring seconded the motion.

Vote on the motion: Mr. Keenan, yes; Ms. Chinnici-Zuercher, abstain; Mr. Reiner, yes; Mayor Lecklider, yes; Mr. Gerber, yes; Mrs. Boring, yes.

Mrs. Boring:

1. Congratulated City employee Gary D. Browning for achieving Level Three of the "Roads Scholar" LTAP training program.
2. Pointed out that John Reiner handed off the Olympic torch to Dave Thomas of Wendy's when the torch was carried through Dublin. It is good to hear the plans for display at the new Wendy's facility proposed in Dublin.

Mr. Gerber commented that he viewed Mr. Reiner's video on the DubTV government channel over the weekend. The segment was very informative, and included nutritional tips for healthy living.

Mr. Reiner thanked Shared Vision for their professional assistance.

Mayor Lecklider reminded everyone that Dublin's Spooktacular event will take place on Thursday, October 25 at Coffman Park and the Recreation Center.

The meeting was adjourned at 8:50 p.m.

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Mayor – Presiding Officer

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Clerk of Council