

# RECORD OF PROCEEDINGS

Minutes of

Dublin City Council

Meeting

DAYTON LEGAL, BLANK, INC., FORM NO. 10148

October 22, 2012

Held

20

Mayor Lecklider called the Monday, October 22, 2012 Regular Meeting of Dublin City Council to order at 6:30 p.m. at the Dublin Municipal Building.

Council Members present were Mayor Lecklider, Vice Mayor Salay, Mrs. Boring, Ms. Chinnici-Zuercher, Mr. Gerber, Mr. Keenan and Mr. Reiner.

## **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) and land acquisition matters (to consider the purchase of property for public purposes).

Mr. Keenan 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; Vice Mayor Salay, yes. The meeting was reconvened at 7:00 p.m.

## **PLEDGE OF ALLEGIANCE**

Cub Scout Pack 138, Chapman Elementary led the Pledge of Allegiance.

## **ROLL CALL**

Present were Mayor Lecklider, Vice Mayor Salay, Mrs. Boring, Ms. Chinnici-Zuercher, Mr. Gerber, Mr. Keenan and Mr. Reiner.

Staff present were Mr. McDaniel, Mr. Smith, Ms. Mumma, Chief von Eckartsberg, Mr. Hammersmith, Mr. Langworthy, Mr. Hahn, Mr. Harding, Ms. Ruwette, Ms. Rauch, Ms. Martin, Mr. Thurman and Ms. Burness.

## **SPECIAL PRESENTATIONS**

- Update from Dublin Foundation – Jennifer Dring, Executive Director and Chris Kelley, Board President and Council representative to the Board

Ms. Kelley reported that she is proud to serve the community as City Council's representative to the Dublin Foundation. The Foundation raises funds for and provides grants to local non-profits to address the needs of the community. The Foundation celebrated its 30<sup>th</sup> anniversary this year and is expanding its vision to include capacity building and donor designated giving as part of its philanthropic agenda. To support this endeavor, the Foundation has hired its first executive director. She introduced the new Executive Director, Jennifer Dring, who will present the Foundation's report to Council.

Ms. Dring, Executive Director, stated that she is excited to serve as the first executive director of the Dublin Foundation. The Dublin Foundation began as "The Dublin Fund" more than 30 years ago. She served on the Board for the past 2-1/2 years. As Ms. Kelley stated, the mission of the Foundation is to raise, invest and disburse funds to non-profit organizations for the betterment of the greater Dublin community. They have expanded that vision, and are looking forward to becoming a community partner in identifying and reaching consensus on how non-profits can fulfill some of the unmet needs in the community. She is a strong advocate of philanthropy and believes that the Dublin Foundation is poised to act as a collaborative intersection for the public, private and philanthropic sectors. They are in a unique position where they can leverage both human and financial contributions to effect change in the community. They work hard to identify the ever-changing needs of the community and then help meet them. The Foundation recently made grant awards for fall 2012, including a grant to the Dublin Food Pantry, to the Dublin branch library for the homework help center, and to the Robotics Booster Club. The Nick Rozanski Memorial Foundation has become part of the Dublin Foundation family of funds, and they are working with Jenny Rozanski and her team to leave a legacy for Captain Rozanski and his daughters. In addition, the Emerald Celebration will take place on Saturday, February

# RECORD OF PROCEEDINGS

Held \_\_\_\_\_

\_\_\_\_\_20\_\_\_\_\_

23, 2013, and it will be an official event for the Presidents Cup. The Foundation welcomes suggestions of ways they can help within the community.

- Update from ADAMH (The Alcohol, Drug and Mental Health Board of Franklin County) - Jonathan Wyly, Chief Financial Officer

Mr. Wyly stated that the ADAMH Board is a Franklin County agency that is essentially an "insurance company" for mental health and addiction services for the uninsured population of the county and for those who have insurance but need assistance with the portion their insurance does not cover. They serve in a continuum of care for crisis services through NetCare. ADAMH Board does not provide the actual services but contracts with service providers. NetCare is their largest crisis center in Franklin County, and they also have a contract with Dublin Counseling Center. Some other providers in their network of care include Nationwide Children's Hospital, OSU, Maryhaven, and North Central Mental Health Services. They fund services beginning with crisis care and also treatment – both community-based treatment and residential-based. Their services range from counseling to detoxification, and they pay for and subsidize housing for mentally ill and addicted people without public housing. Mental health and addiction services do not discriminate in terms of socio-economic status. Mental health problems and addiction issues can strike anyone, so their services serve both the indigent and those who have personal income. ADAMH has an \$80 million budget for 2013. Most of their funds are generated by a property tax levy. They have a two mill, 10-year levy and will not return to the ballot for three to four years. In the past year, they have invested approximately \$650,000 in services within the City of Dublin, which includes the Dublin Counseling Center contract. Their slogan is "Treatment Works, Recovery Happens." The services they provide are intended to be a "hand up, not a handout." Their job is to restore consumers to being taxpaying citizens of Franklin County. He provided Council with a Network Provider Directory and a survey, indicating it would be helpful to them to have City Council complete and return the surveys.

- Update from Social Host Task Force and Dublin A.C.T. (Adolescents and Community Together) Coalition - Jaime Burke, Coordinator, Dublin Counseling Center

Ms. Burke, Coordinator, stated that A.C.T. is a collaborative group comprised of a diverse cross section of Dublin volunteers focused on the prevention and reduction of youth substance abuse. She thanked Council for its leadership in the area of drug prevention and, specifically, in prevention of underage drinking within the community. Council's passage of the social host ordinance to provide greater awareness and enforcement is truly a prototype. Since taking her position as project coordinator in 2010, she has continued to receive contacts from those in drug prevention and coalition work, locally and across the state of Ohio, inquiring how this community is able to do this. It is exciting to share that a key factor was the leadership of Dublin City Council and its understanding of the value of drug prevention. Council also understood the ordinance could not stand alone and that an ongoing committed process focusing on education, awareness and continued enforcement was necessary. Consequently, the Social Host Task Force was formed. The Dublin A.C.T. Coalition is a member of the Task Force. Its quarterly meetings are beneficial in evaluating what is being done, what is working, and what more can be done as a team -- not duplicating, but pooling efforts to ensure the community is engaged in active and consistent enforcement. She provided a document that highlighted the work of the coalition this past year and noted one project in particular. Partnering with Dublin City Schools, they hosted a youth-led Public Service Announcement (PSA) contest with each of the three high school broadcast journalism programs, and received a total of 30 PSA submissions. A winning PSA was selected from each of the high schools. [The three PSAs were shown.]

# RECORD OF PROCEEDINGS

Minutes of

Dublin City Council

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

October 22, 2012

Page 3

Held

20

Mr. Gerber stated that shortly after Council's passage of the social host ordinance, he and Vice Mayor Salay were contacted by P.E.R.C. (Parents Encouraging Responsible Choices), which requested City assistance with the education and awareness of their program. Members of A.C.T., P.E.R.C., the Police, Community Relations, and representatives of the Dublin School Board and City Council meet on a quarterly basis with the objective of bringing greater awareness and education regarding the social hosting issue and the hazards of underage drinking. Initially, parents were educated, and then the focus was on students. The PSAs are evidence that is occurring. He thanked everyone who has worked on this effort.

## **CITIZEN COMMENTS**

Wallace Maurer, 7451 Dublin Road, stated that the topic he wants to address is Dublin as "geopolitically radiant." There are seven cities named "Dublin" across the country, but this is the only city that has emphasized the connection of its name with the Irish immigrant group. Dublin produces a brilliant annual Irish festival, and this year, hosted a Polish-American celebration in conjunction with a park dedication. Approximately a year ago, he shared with Council that a Chinese instructor within the Dublin school system has developed a spectacular Chinese program. However, the instructor did not stage that performance in Dublin, but in Westerville. Within the last week, he noticed in the paper that the local German-American group had celebrated OktoberFest in Shawnee Hills. These are opportunities that the City should seize. Shawnee Hills more appropriately should be a site for an American Indian celebration. There are also possibilities for Asian Indian and East African celebrations. Dublin, as geopolitically radiant, should pursue these programs.

Robin Lee Rose, 195 Stonefence Lane, accompanied by Tim Sells of Columbus, informed Council of the latest published book about Dublin, "When Dublin Wasn't Dublin'." The book was written by Tim Sells, whose ancestors founded this community. Mr. Sells will share information tonight about the book and present a copy of the book to the Mayor. The information was written and edited by her husband, Don Rose. Mr. Sells shares his family stories, including the history of Dublin; the Sells Brothers Circus, the second largest circus in America during the 19<sup>th</sup> century; and his personal experience living and growing up in Dublin until 1976, when he moved away. The book can be purchased at several retail establishments around Dublin and from amazon.com.

Mr. Sells stated that he feels at home in Dublin, and it is a pleasure to be here. He can see that Dublin is being taken care of very well. He loves his hometown; it is captured in his heart and always will be. As he sits in the audience, it is a pleasure to hear the word, "Dublin" repeated. He hopes Council enjoys his book, and that it makes them smile.

Mayor Lecklider thanked him for the book, which Council looks forward to reading.

## **CONSENT AGENDA**

Mayor Lecklider noted that five 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.

Mr. Reiner noted a slight correction on page 4 of the minutes – the word "party" should be "part."

Mayor Lecklider moved approval of actions requested for the five items as proposed on the consent agenda, with the minor correction to the minutes.

Mr. Gerber seconded the motion.

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

1. Approval of Minutes of October 8, 2012 Council meeting

# RECORD OF PROCEEDINGS

Held \_\_\_\_\_

20 \_\_\_\_\_

2. Notice to Legislative Authority of New D5A liquor permit for Sonesta International Hotels Corp., dba Sonesta ES Suites Dublin, 435 Metro Place S., Dublin, OH
3. Notice to Legislative Authority of Transfer of D5A and D6 liquor permits from Residence Inn by Marriott LLC dba Residence Inn Columbus Dublin, 435 Metro Place South to Sonesta International Hotels Corp., dba Sonesta ES Suites Dublin, 435 Metro Place South, Dublin, OH
4. **Ordinance 64-12 (Introduction/first reading)**  
Amending Chapters 51 and 52, Establishing Capacity Charges for the Sanitary Sewer and Water Systems. (Second reading/public hearing November 5 Council meeting)
5. **Ordinance 65-12 (Introduction/first reading)**  
Amending Chapter 35 of the Codified Ordinances to Revise the Fee and Service Charge Revenue/Cost Comparison System and Establishing a Schedule of Fees and Service Charges for City of Dublin Services. (Second reading/public hearing November 5 Council meeting)

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

### **Ordinance 62-12**

#### **Authorizing the City Manager to Enter into a Contract for Health Services with the Franklin County Board of Health for 2013.**

Mr. McDaniel stated that there have been no changes since the first reading. This contract is for the provision of health services and public inspection services for 2013. The amount is based on a per capita rate of \$5.93 per resident, with a total estimated contract amount of \$249,285.34. This represents a three percent increase over 2012, which reflects the first increase in their rate since 2009.

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

### **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. Langworthy stated that he has no additional information to report at this time. A copy of the development agreement was provided to Council in the packet for the second reading. He can respond to any questions Council may have regarding the rezoning, and Mr. Smith will respond to any questions of a legal nature.

Mr. Smith added that he received a call from Mrs. Boring regarding her concerns about setting a precedent with a straight zoning district that includes a development agreement. He believes this property, the owner of the property, and The Wendy's Corporation is so unique that the City is not faced with a precedent-setting action this evening. This is a major corporate citizen with a large number of employees in the City. Council has previously approved an economic development agreement with Wendy's to incentivize them to re-establish their corporate headquarters in Dublin. In this development agreement, Wendy's has agreed to limit the uses permitted on this site, which addresses Planning and Zoning Commission's (PZC) concerns about the potential for various undesirable future uses. In addition, this is a unique property within the new Bridge Street Corridor District – a large corporate setting with a single retail use. At the last meeting, Council raised a concern regarding variances and the fact that they would run with the property. However, the sign waivers are very

# RECORD OF PROCEEDINGS

Minutes of

Dublin City Council

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 101-48

October 22, 2012

Page 5

Held

20

specific to the Wendy's store and would not be useful to another user. An approval process would be required for a future user, should Wendy's cease operation of this store. Legal staff believes that the development agreement addresses Council's intent and PZC's concerns with regard to this particular restaurant.

Mr. McDaniel noted that Mr. Hill, Vice President of Real Estate and Mr. Frissora, Director of Government Relations of The Wendy's Company are present and can respond to questions.

Ms. Chinnici-Zuercher asked them to address the timeframe for the project.

Mr. Hill, The Wendy's Company stated that the timeframe anticipates groundbreaking for construction in the spring with an expected opening date in June or July. They anticipate construction to require approximately 3-1/2 months.

Mr. Keenan asked about their plans for the existing Wendy's restaurant site at the corner.

Mr. Hill responded that there have been ongoing discussions with the City, which has interests in acquiring the property.

Mr. Gerber requested clarification about the development agreement provision that if the Wendy's restaurant ceases to operate as a Wendy's restaurant, another property owner must go through an approval process.

Mr. Smith responded that Wendy's can remodel the restaurant at a future date without undertaking a new development process, but any new entity other than a Wendy's restaurant must go through the Planning & Zoning Commission process for approval of a new final development plan on that site.

Mr. Gerber asked if any future development would be a PUD, part of the Bridge Street Corridor District, or a straight zoning.

Mr. Langworthy responded that it would remain within the Community Commercial District, but it would have to go through the final development plan review of the PUD process.

Mr. Gerber stated that he served on PZC for seven years, and he cannot recall another case in which a final development agreement was tied to a straight zoning district.

Mrs. Boring responded that this is a unique situation because of the Bridge Street Corridor District.

Mr. Smith stated that he believes this situation occurred in the past with the Embassy Suites development at the corner of Frantz Road and S.R. 161. That was also a straight rezoning, and a development agreement was executed to address issues similar to those encountered with the current proposal.

Mr. McDaniel added that there was also a development agreement done for the adjacent Montgomery Inn. The agreement with Wendy's is modeled after that.

Mr. Gerber stated that the City spent significant time and money on creating the Bridge Street Corridor District. At that time, Council recognized there would be unique situations, and that some developments that were not feasible under the BSC District due to the number of waivers required would have the option of pursuing a PUD approval through the PZC. It was his understanding that was the only exception created in the BSC. He did not understand that it would be possible to opt out of both the BSC and a PUD and pursue a straight rezoning district. He asked for clarification.

Mr. Langworthy responded that the point of confusion was likely because a PUD zoning was used as an example in the discussion. However, at Council's request, the Bridge Street Code states that applicants could opt out and request a rezoning to another district. It does not specify that it must be for a PUD zoning.

Mr. Gerber stated that, theoretically, anyone within the Bridge Street Corridor could then indicate a desire not to be part of the BSC or a PUD and opt to pursue a straight rezoning district.

# RECORD OF PROCEEDINGS

Held

20

Mr. Langworthy responded that an applicant can make that request, but the rezoning must be approved by PZC and Council.

Mr. Gerber pointed out that, although approval may not be given, it is an available option.

Mr. Langworthy responded that it would also require staff's evaluation of the viability of that rezoning district. The subject site was considered a unique circumstance in view of the surrounding development, its location and its relationship to Wendy's. He does not anticipate this to be a common occurrence.

Mr. Gerber responded that he does not believe it should be. A substantial investment was made in planning for the Bridge Street Corridor, and he believes that this could become a "slippery slope."

Mr. Langworthy stated that staff is well aware of that issue. An option that remains for a future Council would be to rezone the property back to the BSC District, if Wendy's were to vacate the site.

Mr. Gerber stated that in looking at the various issues as the BSC development proceeds, Council may want to consider revising the BSC Code as needed and in a timely manner. He is concerned that this could be a failing in the current Code. Aside from that, he noted that Dublin certainly welcomes Wendy's back and has invested in that effort. He would, however, request that it be made clear in the development agreement that if this ceases to operate as a Wendy's restaurant, the next occupant of that property must go through the PZC approval process.

Mr. Smith stated that provision has been included in the agreement. He read the clause: "As a result, once the Wendy's restaurant is constructed, no new structure shall be erected unless the Property Owner obtains final development plan approval pursuant to Sections 153.053(E) and 153.053(G) of the Dublin Codified Ordinances," which is the PUD. It does not apply to any modifications/remodeling for the Wendy's store.

Mr. Hill noted that Wendy's has no objection to that language in the agreement.

Vice Mayor Salay stated that she was not present at the last Council meeting, but she reviewed the minutes, the PZC meeting minutes, and spoke with Mr. Smith today. It seems that the record that has been established, although Mr. Gerber's comments and the nature of the development agreement suggest that this case is a complete anomaly. It is extraordinary and pertinent that it is being considered on any level because it is Wendy's, because of their significance to Dublin. As Mr. Gerber mentioned, Wendy's and the City are mutually invested. The timing of both is also unique – the BSC District is approved and Wendy's headquarters returns to Dublin. The City desired both their return and for them to have this facility. The order in which this has occurred necessitates a development agreement. Her support of this is only because this is Wendy's and because of the City's relationship with Wendy's. It is correct that a great amount of time, money and energy was invested in the BSC, but this does not put that aside nor encourage any future applicant to do anything other than go through the BSC. It has been made clear that is Council's intent.

Mayor Lecklider stated that Council looks forward to the new store and anticipates being present at the grand opening.

Wallace Maurer, 7451 Dublin Road, inquired if owners of businesses within the Bridge Street Corridor have opportunities to sell their businesses, would the same procedures that have been applied to Wendy's also be applied in those cases? This seems to set a precedent for that. Is this the concern regarding a potential "floodgate" that was referenced by a PZC member?

Mr. Langworthy responded that this is a unique physical location. However, whenever anyone meets with staff about zoning options for a property, staff reviews all options with an applicant. An attempt is made to inform them of their choices and any

Held \_\_\_\_\_

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applicant is given the same consideration. The pros and cons of each choice are identified, which may be different for each applicant.

Mr. Maurer asked if there have been such inquiries.

Mr. Langworthy responded that there have been numerous inquiries, but aside from Wendy's, no applicant has opted to pursue a zoning out of the BSC district. Planning has processed 15-20 applications, all within the BSC Code.

Vice Mayor Salay stated that the City has very broad discretion in terms of what it would allow or not allow. The "floodgates" that could open would do so at the City's choosing, not the applicant's. The City is in control of the process.

Mr. Langworthy confirmed that is correct.

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

**INTRODUCTION/FIRST READING – ORDINANCES**

**Ordinance 66-12**

**Amending Chapter 153 of the Dublin Code of Ordinances (Zoning Code) to Modify Sections 153.078 through 153.083 (Fence Code), and Relocating Hedge Definition to Section 153.002 (Definitions).** (Case 12-058ADM)

Ms. Martin stated that this a proposed amendment to the Zoning Code, as it relates to hedges. In 2000, there was an extensive revision of the Fence Code and at the same time, a revision was made to the Code for Accessory Structures. The building of fences has been restricted to the buildable areas of each lot. At the July 2, 2012 Council meeting, Council directed staff to prepare legislation amending the Zoning Code as it relates to hedges and landscaping as fences. An extensive review of the Zoning Code was conducted. Staff recommends removing any references to hedges, shrubs and shrubbery in the Fence Code, as well as relocating the definition of hedges to General Definitions. The Landscape Code addresses hedges in relation to property perimeter requirements, vehicular use screening, etc., and therefore it will be preserved in another portion of the Code. The PZC reviewed and recommended disapproval of the proposed amendments, indicating that the existing Code as written has been effective and did not require those modifications. However, Planning staff is recommending approval of the proposed modification, in keeping with Council's direction.

Mayor Lecklider stated that he is confused by a portion that is crossed out in the redlined version. In Section 153.079, Definitions - Fences, it states, "hedges or retaining walls or radio controlled fences shall not be included within the definition of the word fence." Below that, in (A), the word "hedge" is stricken.

Ms. Martin clarified that the proposed changes, indicated by strikeouts in blue, will be removed from the Zoning Code. The definitions indicated here are pertinent to the Fence Code section. The words in knockout will be removed from this area, Fence Definition, and included in the General Descriptions of the Zoning Code.

Vice Mayor Salay stated that a hedge is therefore no longer defined as a fence.

Ms. Martin confirmed that is correct.

Mrs. Boring indicates that she could not find it in the new location in the Code.

Ms. Martin responded that it should be in there, but if not, that will be corrected.

Mrs. Boring asked where this definition will now be found.

Ms. Martin responded that it is being moved to Section 153.002 – General Definitions. She will make this modification for the second reading.

Mr. Reiner stated that he is pleased that "prohibited fencing" includes vinyl clad plastic or PVC polycarbonate. However, there is a new product that should not be prohibited in the fencing materials -- cellular vinyl. The product can be carved and cut, and it

# RECORD OF PROCEEDINGS

Held

20

appears to be wood. It is used for house trim, arbors, pergolas and window boxes, as the product will last as long as the house.

Mr. Keenan concurred, noting that the product is used for trim in southern climates.

Mr. Reiner stated that carpenters cannot differentiate between cellular vinyl and wood until they drill into it.

Ms. Martin indicated that staff would ensure the product was not prohibited with this amendment. It would likely be included under "permitted materials."

Mrs. Boring stated that she agrees, in part, with the Planning Commission. She understands that staff believed Council's direction was to eliminate the use of hedges as fencing. However, her intent was to evaluate where hedging is used and to limit it. She is concerned about a tree row of tall evergreens totally enclosing a property. She had hoped for a balance versus eliminating it altogether.

Mr. Gerber concurred. He believes that Council's direction was to clarify the Fence Code as well as hedges, which in some areas of the City have grown into fences. Part of that direction has been accomplished with the proposed amendment, but not all. He does not object to landscaping in backyards, but the City also has a policy regarding view sheds and open space. A balance needs to be created between the expectations for the entire neighborhood and the expectations of the property owner who desires to landscape their backyard. This does not quite achieve that goal.

Ms. Martin responded that staff is seeking and appreciates feedback from Council on the draft amendments.

Mr. Reiner stated that he went out and viewed the property today that was the subject of this discussion. The person who planted the trees that have now been described by the adjacent property owner as a screen probably added \$10,000 of value to both properties. These trees screen out two abutting houses with back-to-back views of each other. He observed that there was not a limited number of feet from the back of the house to the screen; there was an extensive number of feet. These plantings did not create the effect of total enclosure. People have a right to privacy on the left and right sides of their patios. The Code language should allow the property owner to achieve that and to increase their real estate value. The value of a property is enhanced by how well it is landscaped and screened. A separate issue, which Mr. Gerber references, is the vision into the common area as green and continuous – that also adds value to the property. This was discussed at length at the Community Development Committee. Part of the problem is that the developers have zoned the properties in such a manner that as many as 18 property owners look into a backyard, creating the effect of "living in a fish bowl." Part of this issue can be resolved with the platting process of subdivisions. There was discussion previously about utilizing radiating cul de sacs, so that each property owner does not have to install screenings on each side of their patio to achieve basic privacy.

Mrs. Boring stated that the intent of the Code as stated is to create clear open greenspace and view sheds in the neighborhoods. If plantings are permitted in order to achieve privacy, why even have a fence code? And why is privacy screening around a patio prohibited? What is needed is a balanced approach.

Vice Mayor Salay responded that the difference is with the material. Everyone has the right to screen their own yard from the view of the neighboring properties. A drive around the City neighborhoods indicates that almost every home in every neighborhood has some form of screening, and the view shed is interrupted by the landscaping. However, the landscaping is attractive and adds value to the neighborhood. Nearly every homeowner in her own neighborhood has taken steps to screen their property. This has occurred throughout Dublin, despite the Fence Code. Residents install landscaping for purposes of enhancement and privacy. It is not possible to regulate that retroactively, as 90% of the homes would be in violation if

# RECORD OF PROCEEDINGS

Held

20

their landscape screening were to be defined as a fence. The community has established its own standard for fencing and hedges -- people are not permitted to build tall privacy fences, but instead can install hedges to achieve privacy.

Mrs. Boring stated that she agrees in part. Most Council Members have some buffering/screening in their backyards. She had hoped to achieve a balance, where a solid green wall would not be permitted.

Mr. Reiner stated that it is possible to plant screening so that it achieves privacy on two sides of a patio but also creates a long, green open view in keeping with the open space section of the Code. A combination of the two concepts is effective. He does not believe Dublin homeowners, in general, have a concern with this. He visited the property that was the subject of this complaint, and, in his view, the landscaping did not create a barrier but instead is a major asset for both parties.

Mrs. Boring asked if this provision is removed from the Fence Code, would it be permissible to plant evergreens next to the sidewalk?

Ms. Martin responded that, in theory that would be permissible. There are planned unit developments in which planting of hedges has been encouraged versus installing fences. In this particular case, however, it is being used for that purpose. In one of the zoning districts, there is a provision for fencing around a daycare that is to be screened with a hedge. If hedges are defined as a fence, then that constitutes screening the fence with another fence. Staff was attempting to identify the least disruptive manner in which to address this. In 2008, there was a discussion about no build/no disturb zones where there are preserved tree rows. If a connection to that were to occur, that could also be determined to be a fence.

Mr. Reiner stated that in the backyard, the intent is to have lines of vision that enhance the property, and then create screening in areas to minimize views of items such as telephone poles, sheds, etc. It is difficult to legislate that.

Vice Mayor Salay stated that Dublin has had the existing Fence Code in place for 12 years and has had one complaint -- an individual who complained that their neighbor was over screening their property.

Mr. Keenan stated that the City is attempting to devise a solution to a non-existent problem, and therefore it is difficult to legislate this.

Mrs. Boring stated that if it is possible to plant a row of evergreens at the front of a house next to the sidewalk, that is a problem; if it is permitted, it will eventually occur.

Mr. Reiner stated that what Ms. Martin is referring to is that in the case of a zero lot line issue, one would want privacy. There is not an issue with defining a front yard with a dwarf-style lilac bush or gate; that enhances the neighborhood. In addition, there will be some future rezonings that will require that type of screening, due to the density of the units. He agrees with Vice Mayor Salay that in the 40 years he has been involved with the Dublin government, there has been one such case. Now that he has viewed the property, he does not agree that there was ever a problem.

Mrs. Boring noted that there is the potential for a problem in the future with these Code changes. The question is whether Council wants to take an action that could bring future problems. Is there some way for the Code to specify where hedges are permitted?

Mr. Smith recalled that he previously lived in the Weatherstone portion of Muirfield. His neighbor had ten-foot hedges and an iron fence in front of his house while he had bushes in front of his house. He cannot imagine enforcement of this type of legislation. Could somebody plant three large trees in their front yard as a fence?

# RECORD OF PROCEEDINGS

Minutes of

Dublin City Council

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

October 22, 2012

Page 10

Held

20

They could, but the trees would probably die due to lack of room for growth. The reason an attempt is being made to clarify the Code is because someone filed a complaint based upon how the Code is currently written. It is the first such complaint received, and it is doubtful whether the City would ever have prosecuted it. It has raised the issue, however, so that Council can review it. There is the issue of legal enforcement because it is difficult to write a standard that will address the many neighborhoods in Dublin. For example, every property that backs onto Muirfield Drive has a green hedge or some type of landscaping to screen their homes from the roadway.

Vice Mayor Salay stated that it is a living fence, and a living fence has become a community standard.

Mr. Gerber agreed that it would be difficult, but it should be possible to address this in some manner. During the last ten years, the Planning and Zoning process has defined the buildable areas of a neighborhood where fences were permitted, but the back of the neighborhood was left open.

Mr. Smith stated that staff would continue to work on this prior to the second reading.

Mayor Lecklider commented that in the years he has served on PZC and on Council, he has considered view sheds in the context of structural fences interrupting the view shed, not vegetation. He moved into his neighborhood 20 years ago, and a strong consideration in choosing it was that he would never see the stockade fence effect -- but not in terms of vegetation. He lives on a corner lot, and 20 years ago, he could view his neighbors' entire backyards, as well as every utility box. During those years, his neighbors have planted trees and other vegetation. The view is far more appealing today due to the various forms of vegetation screening that exists. The screening may interrupt the view shed today of the nearby fields, but perhaps someday, it could also block the view of something not so appealing on those fields. At the end of his street, there are acres of woods in Avery Park. Perhaps it could be said that the plantings interrupt his view shed, but he prefers to view the trees. He supports the way in which things have evolved. As Mr. Reiner pointed out previously, it would be impractical for homeowners to submit their landscape plans for review. He does not have the same issue with perceived interruption of view sheds.

He noted that there are a couple of things in the meeting record to clarify. First, Wyndham Village does not have a forced and funded homeowners association, so that is not an issue in this matter. Also, it appeared from the PZC minutes that Mr. Taylor's direction to staff was that the issue should be addressed via a chainsaw. Generally, Planning and Zoning Commission (PZC) provides recommendations to Council and not direction to staff. Therefore, he believes that was inappropriate. The PZC minutes further indicate that the Chair "echoed that Mr. Taylor had asked that Code Enforcement get back on the job." That direction is to be given by the City Manager. PZC can make recommendations to Council; Council, in turn, can give direction to the City Manager.

Mayor Lecklider invited public testimony.

Steve Ziegler, 6294 Wismer Circle, stated that he wants to voice his support for retaining the current Fence Code, where trees and other living materials can be fences. When they moved to Dublin 19 years ago, what drew them to their house in Wyndham Village was the open spaces, and in particular, the no build zone at the back of the properties. The current interpretation that was given to them by previous City Manager Brautigam and Mr. Langworthy was that they could have screening, but if it grew to a 50% opacity, it would be problematic. What is abutting their property now is a screening of 100% opacity, and the trees will continue to grow, eventually reaching 20-30 feet in height. The view from their back door will be nothing but a solid row of trees. PZC voted 7-0 to keep that regulation in place, with perhaps some adjustment of height or opacity to make it a little more flexible and manageable. It is

# RECORD OF PROCEEDINGS

Held \_\_\_\_\_

20 \_\_\_\_\_

possible to have screening to accomplish privacy without indicating there are no restrictions.

Mr. Reiner stated that there are certain times when 100% opacity and a block of screening is desired -- when the view is so unattractive that it de-values the home. It can be telephone poles, a shed, or perhaps a neighbor's unkempt property and trash. Mr. Ziegler agreed that there are such occasions, but he does not believe this is one of those times when 100% opacity makes sense. The neighbor's house is in the middle of the block, and he does not believe his home is so unattractive that such screening is warranted.

Mayor Lecklider asked if the property in question is directly behind Mr. Ziegler's home. Mr. Ziegler responded affirmatively.

Mayor Lecklider asked if Mr. Ziegler is indicating that he wants to see the back of his neighbor's house.

Mr. Ziegler stated that it is not that he wants to see it, but it is possible to have some screening for privacy without every inch of the perimeter comprised of a solid, straight wall of trees. The landscaping could be staggered.

Mr. Reiner stated that, in this case, the central part of that blockage is helping both properties. The homes are lined up so that one looks directly at the rear of the other property. There is a point when this type of screening becomes an enhancement and adds value to the properties.

Mr. Ziegler responded that, in his opinion, this screening does not do so, and that is the reason he is present tonight.

Mr. Reiner stated that Mr. Ziegler apparently would rather view architecture than trees.

Mr. Ziegler responded that is the way it existed for 14 years, prior to the time the trees were installed.

Ms. Chinnici-Zuercher stated that Mayor Lecklider has lived in the neighborhood for a significant time, and his view shed has remained consistent, except for a few additional small trees. However, Mr. Ziegler is not looking down the same line as the Mayor; he is looking across his backyard. He has experienced a dramatic change from what he had been accustomed to for an extended time period. She does not believe that a Code revision is needed to address this as it is likely a matter of personal taste. However, in this case, the trees were equally placed versus staggering them, which would have accomplished privacy with a substantially different appearance. That may not be an issue of right or wrong, but an "in the eye of the beholder" matter, depending upon the owner's desired look for their property. Substantial time has been devoted to discussion of this matter on numerous occasions. It does not seem possible to draft the right language in the Code to allow citizens to landscape their property effectively without also creating a significant barrier. The issue seems to be more oriented to this kind of a subdivision development. Larger properties often have tree lines on three sides. Much of this particular issue seems to be due to the location of the property and the layout of the plat. In the future, it will be important to be mindful of that element before approving the layout of the subdivision. There is little that can be done with the developments already approved, which comprise 70% of the City.

Mrs. Boring stated when trees are small, their appearance can be fine, but when they grow much larger, they can create issues. However, the City cannot tell the property owner to remove their trees. She was hopeful that it would have been possible to modify the language in some way to address the most obvious cases, but agrees that enforcement would be extremely difficult.

# RECORD OF PROCEEDINGS

Held

20

Mayor Lecklider stated that he appreciates Ms. Chinnici-Zuercher's point, but he believes this is one of those cases in which "beauty is in the eye of the beholder." His lot straddles two lots, and if his neighbors were to plant a solid row of evergreens, he would welcome that. All the homes in the subdivision are similar, and the backs of the homes are not particularly attractive. In his view, a row of evergreens would be a more attractive view than the architecture of the back of the homes.

Vice Mayor Salay stated that she was not serving on Council when the Fence Code was approved. At one point, the City's standard was that evergreens, landscaping, hedges, etc. were considered fences along with the permitted fences in the buildable area. However, she could never accept the view that landscaping is fencing and interruptive of the view shed. To her, landscaping and green materials are a hallmark of Dublin and an enhancement. She agrees with the Mayor that landscaping in a view shed is never a negative thing. She never understood why the discussion of fencing included landscaping along with wood or wrought iron fences. It seemed these should be two separate items. Mr. Ziegler's focus is on the interruption of his view shed – implying that his neighbor had essentially created a stockade fence. However, she understood Council's current position to be that landscaping should not be included in the definition of fencing. She recalls that, previously, Planning staff provided numerous photos of different neighborhoods with landscaping as fences, and Council recognized that was the accepted community standard. To say now that landscaping used for that purpose is a problem will create an even larger problem in terms of enforcement. And further, that cannot be accomplished, as one of the Commissioners suggested, with a chainsaw. She is in complete disagreement with that comment. It seems to her that Dublin has a community standard and property owners want to be able to screen their yards. She is not convinced that staggering evergreens in a 30-foot row is going to change the effect. The effect will still be that they provide complete opacity and privacy for the yards in question. Personally, she does not believe that is negative and believes it enhances the neighborhoods. To her, plantings are not fences, and Council should not try to regulate them. That would constitute overstepping the role of government. She does not want to try to establish or define the point at which plantings are fences.

Mr. Reiner responded that it is largely a subjective matter.

Vice Mayor Salay agreed. It is much more subjective than defining the buildable area of a lot, where a homeowner can fence it for a pet or child with a wood or wrought iron fence -- that can be regulated. However, the City cannot dictate where homeowners can plant bushes, which today are defined as one thing, and a few years from now, as something else.

Mayor Lecklider asked staff about their interpretation of this discussion in terms of any revisions of the ordinance for the second reading.

Mr. Smith responded that he believes it is nearly impossible to draft an ordinance that would not be struck down for vagueness. He cannot write legislation that cannot be enforced. A better option would be for Council to direct staff that in the future, they take steps to ensure a variety of view sheds and no-build zones during the platting stage.

Vice Mayor Salay asked if his suggestion is that the proposed ordinance is an enforceable alternative to the current Fence Code.

Mr. Smith responded that Council asked how this complaint had been filed when there had never been a similar such case. The fact that the complaint was based upon interpretation of the current Code language drove Council's interest in changing it. His opinion is that the easiest way to prevent a similar issue occurring in the future is to eliminate vegetation from the fence definition, limiting it to wood, metal or the new material that Mr. Reiner has described.

Mayor Lecklider asked if the staff-proposed change eliminating "hedges" from the definition of fences adequately addresses the need.

Held \_\_\_\_\_

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Mr. Smith responded affirmatively. Staff would not file a Code complaint against a property owner who had a hedge, tree row or bushes that serve as a fence. Mayor Lecklider asked if that direction would be acceptable to those Council Members who have voiced some concerns.

Mrs. Boring responded that she recognized that enforceability would be an issue. It would be difficult to require property owners to remove their landscape investment. Her only concern was with someone taking the opportunity to screen their entire house by installing a row of evergreens in front of it. However, there may be deed restrictions that would preclude this.

Ms. Chinnici-Zuercher stated that she believes she has observed that type of planting with a property located just north and east of the Post Road roundabout at Avery-Muirfield. The property owner developed a "barricade" comprised of multiple rows of different kinds of trees and built up the side of the property with stone. The trees are not planted in a straight row. In a few years, that will likely be a forested lot.

Mrs. Boring stated that type of landscaping would not work on smaller lots. However, enforceability of any provisions is an issue.

Mayor Lecklider stated that, for the record, he loves his neighborhood, in case anyone should have a different impression.

There will be a second reading/public hearing at the November 5 Council meeting.

**INTRODUCTION/PUBLIC HEARING/VOTE – RESOLUTIONS**

**Resolution 61-12**

**Intent to appropriate a 0.113 Acres (With 0.06 Acres Present Road Occupied), More or Less, Fee Simple Interest from the Asman Land Co., Ltd.**

Mr. Keenan introduced the resolution.

Mr. McDaniel stated that the land acquisition process is underway for the Emerald Phase 8 roadway project. The negotiations with the grantor for this particular property have reached an impasse, and the City will likely need to appropriate the property. This resolution will authorize that action, should it be necessary.

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

**OTHER**

- **Tree Replacement Fee Waiver Request for 6200 Wilcox Road (Master Maintenance, Inc.)**

Ms. Martin stated Master Maintenance is requesting a fee waiver for replacement trees of 97 caliper inches that were removed due to their poor condition. In terms of replacement, they are unable to accomplish 97 caliper inches, which means a fee is required in lieu of replacement. The applicant is requesting a waiver of that fee. Planning supports their request. [Ms. Martin displayed photo slides.]

Mayor Lecklider noted that he does not see a representative for the property owner present this evening.

Vice Mayor Salay stated that this property has had difficulty meeting City Code, and this has been a long-time source of consternation for the Code Enforcement and Legal departments. She has asked Mr. Smith to provide background.

Mr. Smith stated that the legal fees for this type of matter are included within their regular retainer. However, this year, one Legal staff member alone has spent \$8,000 based on hours spent on this case. He did not have the opportunity to search that information for the other Legal staff members involved. The case has been ongoing for 2-1/2 years.

Vice Mayor Salay asked if multiple attorneys have worked on the case.

# RECORD OF PROCEEDINGS

Held \_\_\_\_\_

20 \_\_\_\_\_

Mr. Smith responded that is correct.

Vice Mayor Salay stated that the City Code Enforcement department has also spent many hours of time with this property owner. The south side of the building remains in complete disrepair, including weeds and missing siding. It is a construction site in progress, but has been in this state for years. Only in the last two months has the property owner completed what they were asked to do with their 2009 rezoning. The original parking lot surface was purchased from an asphalt company working in the area. The asphalt company poured a parking lot for them that was completely noncompliant, extending very close to the trees that were subsequently removed earlier this year. Upon completion of the parking lot, the property owner became aware of their noncompliance after a visit from Code Enforcement. That resulted in the rezoning action. Now, the City has learned that the trees were illegally removed. She assumes that those trees were discussed during the rezoning process. Although the trees may have been in poor condition, 97 caliper inches of trees are valuable. She is extremely frustrated with this property owner. She is surprised that they are now coming to request a waiver, based on the history and the fact that the City has already invested hundreds of hours and thousands of dollars of taxpayer funds attempting to bring them into compliance. They remain in non-compliance, yet they are requesting a waiver of fees.

Vice Mayor Salay moved to deny the fee waiver request.

Mrs. Boring seconded the motion.

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

- **Right-of-Way Encroachment Request and Fee Waiver Request for a Neighborhood Entry Feature (Ballantrae, Sections 1 and 2)**

Ms. Rauch stated that there are two parts to this application. The first is a right-of-way encroachment. The applicant is requesting approval to install additional landscaping, including two monoliths, at the intersection of Dalmoral Lane and Eiterman Road. This is adjacent to the entrance to the Washington Township School, just north of Rings Road. The entry feature will appear similar to the other entry features at Ballantrae entrances. The applicant is requesting approval to locate the monoliths within the right-of-way. In addition, the City fee schedule does distinguish fees for recognized homeowner associations, so they do not have to pay a fee for an amended final development plan, which was required for this. The amended final development plan was approved by the Planning Commission. The fee schedule, however, does not address whether the right-of-way encroachment application fee can also be waived, so the applicant is requesting a fee waiver to recover the \$1,200 they paid for the right-of-way portion of the application. Planning recommends approval of both requests.

Ms. Chinnici-Zuercher asked if this is the first time this situation has occurred.

Ms. Rauch responded that she is not certain. They searched the records, but could not find other instances where the entryway features were located within the right-of-way and posed a problem.

Vice Mayor Salay recalled that it occurred previously with Wyandotte Woods subdivision.

Ms. Chinnici-Zuercher stated that it may be necessary to change the Code, so that these requests are not brought to Council. That involves both staff time and the need to reimburse the fee – a costly exercise if Council will approve the request in any case.

Mr. Reiner asked if stone monoliths located in the right-of-way create a liability issue for the City in an accident.

Ms. Rauch responded that there is a hold harmless agreement that the homeowner association is required to sign.

# RECORD OF PROCEEDINGS

Minutes of

Dublin City Council

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

October 22, 2012

Page 15

Held \_\_\_\_\_

20 \_\_\_\_\_

Mr. Hammersmith stated that these are not unlike other monoliths. They are not in the sight visibility triangle; they are in the clear zone. Staff does not foresee any issue of liability for the City.

Mayor Lecklider requested clarification. Even though the structures are located in the City's right-of-way, there would be no liability if a car were to strike them?

Mr. Smith stated that there is case law that states that once a car leaves the roadway, whatever the driver strikes in the right-of-way is the driver's problem. There was a significant case in Grove City where a vehicle struck a metal telephone pole in the right-of-way. The judgment was that the vehicle is protected only while in the roadway.

Mrs. Boring asked if the City could charge the motorist for replacing the telephone pole.

Mr. Smith responded that, typically, the driver's insurance company covers the cost of damage occurring to items within the right-of-way.

Vice Mayor Salay moved approval of the fee waiver request for the amended final development application for neighborhood entryway feature.

Mr. Reiner seconded the motion.

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

Vice Mayor Salay moved approval of the right-of-way encroachment.

Mrs. Boring seconded the motion.

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

- **Community Plan Website Demonstration**

Mayor Lecklider noted that this item has been postponed until a future meeting.

## STAFF COMMENTS

There were no comments from staff.

## COUNCIL COMMITTEE REPORTS/COUNCIL ROUNDTABLE

- **Avery Park - Soccer Field Dedication**

Mr. Gerber, Special Council Committee re KIA Recognition Chairperson asked to postpone this matter until the Committee has completed preparation of their recommendations to Council.

Council consensus was to postpone this matter until the Committee recommendations are completed.

Mr. Gerber noted that the packet materials included a recommendation from the Law Department regarding a policy for addressing requests for variances from the Zoning Code to accommodate persons with disabilities. He has reviewed the recommendation and moved approval of the recommendation.

Ms. Chinnici-Zuercher requested a summarization of the recommendation.

Mr. Smith responded that the Legal staff recommendation is that Council adopt a policy that permits staff to approve a variance allowing a fence to be installed in the case of a disability that requires reasonable accommodation.

Mayor Lecklider noted that when the situation no longer exists, the fence must be removed.

Mr. Smith affirmed that condition is included in the variance approval.

Ms. Chinnici-Zuercher stated that her intent is that the policy does not involve a long, bureaucratic and emotional process for families. Those issues already exist daily for them. The process must be easy, manageable and not require unnecessary cost for them to supply the documentation the City requires.

# RECORD OF PROCEEDINGS

Minutes of

Dublin City Council

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

October 22, 2012

Page 16

Held \_\_\_\_\_

20 \_\_\_\_\_

Mr. Smith responded that it would be a simple protocol, involving an application for the variance, accompanied by proof of the disability, which is verified by the Legal department as a reasonable accommodation. The permit is then granted for the period of time the person is living within that residence. This is consistent with Federal law.

Mrs. Boring requested that the policy reference the term "person," not child.

Mr. Smith affirmed that it would do so.

Ms. Chinnici-Zuercher seconded the motion.

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

Mrs. Boring referred to staff's memo regarding a tobacco-free workplace policy.

Currently, there are ashtray receptacles outside the Rec Center doors. Does the policy mean that the rule for smoking 10 feet away from the door will not apply?

Mr. Harding clarified that the purpose of this policy is impose a workplace rule on City employees. Employees are prohibited to smoke within the workplace, and this prohibition includes use of smokeless tobacco, as well.

Mrs. Boring inquired if the 10-foot rule from the doorway continues to apply.

Mr. Harding responded that it does.

Vice Mayor Salay thanked everyone for their kind expressions of sympathy sent to her family upon the recent death of her father. They were greatly appreciated.

The meeting was adjourned at 9:08 p.m.

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Mayor – Presiding Officer

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Clerk of Council