

Brookville City Council
Regular Meeting
October 6, 2020

The Regular Meeting of the Brookville City Council was called to order by Mayor Letner at 7:30 p.m. on October 6, 2020. The meeting was held virtually using the Zoom web application. The Pledge of Allegiance was recited. Members Crane, Fowler, Schreier, Swabb, Wilder and Zimmerlin; Manager Keaton, Finance Director Brandt, Law Director Stephan, Clerk Duncan, Fire Chief Fletcher and Police Chief Jerome were present.

Roll Call by Clerk Duncan.

Motion by Swabb, second by Fowler to approve the Agenda as presented. All yeas, motion carried.

Motion by Fowler, second by Schreier to approve the Regular Council Meeting Minutes of September 15, 2020. All yeas, motion carried.

Manager Keaton reported last Thursday, Governor DeWine signed HB614, legislation that distributes the remaining CARES Act funds on a per capita basis. The City is estimated to receive \$211,674. The bill also extends the deadline by which municipalities must return unused funds to November 20; previously the CARES Act funds were to be encumbered by October 15. Manager Keaton advised staff is finalizing cost estimates on the items they would like to procure and will provide Council with a detailed list at the next Council Meeting.

Manager Keaton reported a two-page City Newsletter was re-implemented and will be inserted in the utility bills and mailed out later this week.

Manager Keaton reported leaf pickup will begin on October 12. Leaves will be picked up daily, beginning at one end of the city and working completely through all streets before starting the route over again. Manager Keaton advised raked leaves should be placed in the street, 6" away from curbs. Residents should make sure leaves are not under, between or around parked vehicles. Yard waste should not be mixed with leaves as grass, sticks, brush or spent flowers clog the vacuum.

Manager Keaton reported Absentee Voting by mail and early in-person voting begins today. Citizens can vote early at the Montgomery County Board of Elections, which is in the basement of the Montgomery County building located at 451 W. Third Street, Dayton.

Manager Keaton reported the water tower in Golden Gate Park went back online on September 23, 2020. Soon after the tower was back in operation, it was discovered the mud valve at the top of the tower, inside the column at the base of the bowl, does not seal. It has a slow leak. The mud valve is used to remove sediment from the bottom of the tower and drains into the overflow pipe. This is the original mud valve that was installed when the tower was built. It was not a part of the Water Tank Project, nor was it affected by the work that the contractors performed. The valve needs to be replaced before cold weather sets in, as this could potentially block the overflow pipe. Manager Keaton advised the estimate for the valve and installation is \$5,800. Replacing the mud valve will require the tower to be drained, refilled, and disinfected once the new valve is installed.

Manager Keaton reported next month, the City will be extending the 8" sanitary sewer line from the south edge of the school property across Johnsville-Brookville Road to a manhole that will be installed on the west side of the roadway. There are three vacant lots that sold recently on Johnsville-Brookville Road and the new property owners want to tie into our sewer. This project will also allow for future sewer tap-ins for homeowners along Johnsville-Brookville Road and for any future development in the area. The cost of the project is \$21,530 and will be paid out of our Sewer Fund.

Manager Keaton presented a resignation letter from Park Board Member Zach Music. Manager Keaton requested Council accept his resignation and authorize the Clerk of Council to advertise the open position.

Motion by Fowler, second by Swabb to accept the resignation of Park Board Member Zach Music and authorize the Clerk of Council to advertise the open position. All yeas, motion carried.

Manager Keaton reported work began yesterday on our Front Office Renovation Project. The contractor ran into an issue when existing floor tile was discovered under the existing reception counter and lobby area. The tile needs to be removed to create a suitable substrate for the new carpet. The existing carpet and tile need to be removed and new carpet installed in the hallway that is being created. Change Order #1 will increase the project by \$3,700 to a new contract price of \$51,950.

Motion by Zimmerlin, second by Crane to authorize Front Office Renovation Project Change Order #1 which will increase the project by \$3,700 to a new contract price of \$51,950. All yeas, motion carried.

Manager Keaton thanked Law Director Stephan for filling in as Acting City Manager while she was on vacation and again last week during her family emergency. Manager Keaton also thanked the Department Directors for everything they did for her last week, stating everyone went above and beyond, and she is very grateful for that.

Finance Director Brandt presented the September 30, 2020 Fund Balance.

Motion by Wilder, second by Fowler to accept the September 30, 2020 Fund Balance as presented.

Finance Director Brandt presented a list of items purchased with CARES Funds to date and reported the list will change as more CARES Act funds are released to us. Finance Director Brandt reported some of the items that will be purchased with the additional CARES act funds include AED's for each police cruiser and to replace units that are near end-of-life, a portable UV light disinfectant system, hands free faucets and towel dispensers for our City restrooms, internet roll-out within the community, a camera system for our Council Chambers and replacing the cloth seating in Council Chambers.

Fire Chief Fletcher reported there were some very serious crashes and fires in the past month. There has also been an uptick in heroin and fentanyl overdoses recently. Fire Chief Fletcher reported the Fire Department is participating in a study which gathers data regarding heroin and fentanyl use and may lead to grant funds in the future.

Fire Chief Fletcher reported the City's water, fire and dispatch system is currently being evaluated by the Insurance Services Office, which assigns an ISO rating that insurance rates are based upon. Fire Chief Fletcher reported last year we achieved a rating of 4, and he expects to keep the same rating we this year.

Police Chief Jerome reported another Brookville Police Officer was injured in the line of duty on September 23. This was the second Officer to be injured in the line of duty recently. The Officer is currently back to work, but on light duty.

Police Chief Jerome reported we are still experiencing an uptick in speeding violations and our Officers are continuing to enforce speed limits heavily.

Police Chief Jerome reported our Officers are also heavily enforcing parking violations on the highway ramps.

Police Chief Jerome reported our Officers recently issued several alcohol violations at Golden Gate Park.

Law Director Stephan reported proposed Ordinance 2020-07 to regulate the operation of golf carts within the City of Brookville is before City Council tonight for a first reading. This proposed Ordinance was discussed by Council at the last meeting after a presentation by Police Chief Jerome. Law Director Stephan asked if Council had any questions or comments?

Member Schreier stated the body of the proposed Ordinance mentions other under-speed vehicles and asked if the term under-speed vehicles should be included in the title?

Law Director Stephan replied it might be a good idea to include under-speed vehicles in the title as there may be other under-speed vehicles from time to time that we need to regulate.

Member Zimmerlin asked if the proposed Ordinance was modeled after legislation in other municipalities?

Law Director Stephan replied the proposed Ordinance is modeled after an Ordinance in Huber Heights regulating golf carts. We added specific language requiring the use of lights from sunset to sunrise, or when atmospheric conditions would require lights.

Motion by Schreier, second by Zimmerlin to read proposed Ordinance 2020-07. All yeas, motion carried.

Law Director Stephan stated the title can be amended at the next meeting.

Motion by Fowler, second by Schreier to accept the first reading of proposed Ordinance 2020-07 entitled "AN ORDINANCE ADOPTING CHAPTER 343-GOLF CARTS TO PROVIDE REGULATIONS FOR THE OPERATION OF GOLF CARTS IN THE CITY OF BROOKVILLE. All yeas, motion carried.

Mayor Letner encouraged everyone to "help us, help you" and vote yes on Issue 1 and Issue 2.

Mayor Letner thanked Gale Colston, the Pink Ribbon ladies, Mick Waltz, Police Chief Jerome and Fire Chief Fletcher for making the annual Breast Cancer Walk a success.

Motion by Fowler, second by Zimmerlin to read proposed Resolution No. 20-17. All yeas, motion carried.

Motion by Fowler, second by Swabb to accept the third reading and adopt Resolution No. 20-17 entitled "A RESOLUTION AUTHORIZING THE CITY OF BROOKVILLE TO PREPARE AND SUBMIT AN APPLICATION TO PARTICIPATE IN THE OHIO PUBLIC WORKS COMMISSION STATE CAPITAL IMPROVEMENT AND/OR LOCAL TRANSPORTATION IMPROVEMENT PROGRAM(S) AND TO EXECUTE CONTRACTS AS REQUIRED." All yeas, motion carried.

Motion by Fowler, second by Zimmerlin to read proposed Resolution No. 20-18. All yeas, motion carried.

Motion by Fowler, second by Wilder to accept the third reading and adopt Resolution No. 20-18 entitled "A RESOLUTION AUTHORIZING THE CITY OF BROOKVILLE TO PREPARE AND SUBMIT AN APPLICATION TO PARTICIPATE IN THE OHIO PUBLIC WORKS COMMISSION STATE CAPITAL IMPROVEMENT AND/OR LOCAL TRANSPORTATION IMPROVEMENT PROGRAM(S) AND TO EXECUTE CONTRACTS AS REQUIRED." All yeas, motion carried.

Motion by Fowler, second by Swabb to read proposed Resolution No. 20-19. All yeas, motion carried.

Motion by Swabb, second by Schreier to accept the second reading of proposed Resolution No. 20-19 entitled "A RESOLUTION ACCEPTING THE AMOUNTS AND RATES AS DETERMINED BY THE BUDGET COMMISSION AND AUTHORIZING THE NECESSARY TAX LEVIES AND CERTIFYING THEM TO THE COUNTY AUDITOR." All yeas, motion carried.

Park Liaison Fowler had no report.

Planning Commission Liaison Schreier advised Planning Commission has a Public Hearing scheduled for October 22, 2020 on the proposed rezoning of the Meadows of Brookville.

Jessica Wells, of 21 Heckathorn Road, stated in regards to the Meadows of Brookville, Section Five, a Final Plat design was approved first by Brookville Planning Commission Regular Meeting January 19, 2006 and Brookville City Council Regular Meeting February 7, 2006, zoned R-1C with 45 single-family lots, with all yeas at both meetings. At Brookville Planning Commission Regular Meeting March 16, 2006, Law Director Rod Stephan "stated there was a Preliminary Plat for the Meadows of Brookville that was adopted many years ago. Preliminary Plats may be modified. They are not legally binding. The legally binding document that is filed through our process is the Final Plat." Mrs. Wells asked if the Meadows of Brookville, Section Five Final Plat filing has already been approved by the Brookville Planning Commission and the Brookville City Council in 2006 as a legally binding document between the City of Brookville and Tim Taylor, of Taywood Enterprises, the developer, why did she receive a certified letter from the City with a proposal to rezone and replat Section Five from R-1C to R-3 multi-family? It seems this matter has already been brought before Council and finalized.

Mrs. Wells also stated in regards to the same Meadows of Brookville, Section Five, at the Brookville Planning Commission Regular Meeting May 19, 2005, the Brookville Planning Commission discussed rezoning to build doubles and the Planning Commission was not in favor of rezoning the lots at that time. At the Brookville Planning Commission Regular Meeting on September 15, 2005, Tim Taylor, of Taywood Enterprises, indicated that he wanted to incorporate the concept of the single-family homes facing Westbrook Road. Planning Commission was in favor of single-family homes facing Westbrook Road. At the Brookville Planning Commission Regular Meeting March 16, 2006, Member Boose "indicated Planning Commission unanimously turned that down because they felt the citizens of the subdivision would not want doubles sitting out there, when they were told that it would be single family homes." Mrs. Wells stated procedurally, it seems to her that building doubles on the Meadows of Brookville, Section Five, has already been addressed and asked why is this coming up again? Why did the Planning Commission flip flop on rezoning from R-1C to R-3 from being so against it that is wasn't even brought to City Council in 2005 or 2006 but is now being brought up again 15 years later?

Law Director Stephan replied Planning Commission has not flip flopped. They have not made any kind of decision at this time. The applicant came in for a preliminary conference to propose rezoning to R-3 for zero lot line homes to be built along Westbrook Road. Planning Commission has not made a final decision. There will be a Public Hearing on October 22, 2020, after which Planning Commission will make a final recommendation to City Council. There will then be two more readings of the proposed Ordinance for rezoning. At any point in time, Planning Commission or City Council could vote no and this process would end. The bottom line is the applicant is coming in, the property is vacant, and they have a new developer who wants to build zero lot line homes. The evidence and public testimony from residents will be considered. Law Director Stephan stated Ms. Wells is correct, there was previous opposition to building doubles along Westbrook Road. Planning Commission will consider the current evidence and make a decision at that time.

Ms. Wells asked if she had time for another question?

Law Director Stephan stated he used some of her allotted 5 minutes and advised her to go ahead with her question.

Mrs. Wells stated she and her husband bought their current home in October of 2019. They used to live on Hull Court until the Memorial Day tornados. That night, she and her husband literally laid on top of their children to protect them from the wind and the debris. It is a miracle that the five of them walked away relatively physically unharmed. Her oldest child left the house that night in two different shoes because it was the best they could do when a 40-foot tree landed in the bed she was asleep in 10 minutes before. Her four-year-old asked her every day for months while they were displaced if they were safe in the house. All three of her children still show signs of extreme stress and anxiety during storms and on windy days. Immediately after things settled down that night, before they even knew the extent of the damage, she saw the Brookville community come together to help the victims of the tornado. Friends, family neighbors and complete strangers came

together to support them when they needed it the most. Mrs. Wells stated you don't find that sense of community just anywhere. Mrs. Wells stated they lost everything they had worked for and any sense of security they had. Their insurance company told them that they needed to demolish their pile of rubble to dirt. They were displaced for months, staying first with family and then in a rental outside of the city. When they started house hunting, they did not look anywhere except in Brookville, because they want to be here. They want to raise their family here and want their children to be Brookville graduates. Mrs. Wells stated they looked at over two dozen houses before they found this one. They were in the house for less than ten minutes before writing the offer, which was one of four made within the first 24 hours the house was on the market. Mrs. Wells stated they have worked hard over the last twelve months to make this house their forever home. The licensed realtor they worked with in 2019 assured them that the open field behind their property is zoned for single family homes. The final plat was approved in 2006. Mrs. Wells stated, in her opinion, the Brookville City Council, Brookville Planning Commission, Mike Oxner and Tim Taylor have all made comments and guarantees to the residents of Brookville on the public record that none of them have followed through with. Mrs. Wells stated the residents have been promised multiple times that single family homes would be built, sidewalks and street lights would be installed along Westbrook Road, the speed limit would be reduced to 35 miles per hour and that the annexation of Westbrook Road from the Ohio Department of Transportation was begun as an expedited type 2 process in March of 2006. It has been at least 14 years since these promises were made, one year since she has lived here and yet nothing has been done, except to antagonize the residents by bringing the issue of rezoning to multi-family lots once again to their attention, when the issue has already been entered into as a legally binding contract. Mrs. Wells stated they don't want duplexes, town houses, multi-dwelling structures, or whatever term you please to use to be built along Westbrook Road or in any remaining areas of the Meadows of Brookville. The residents who have invested here and have committed to living in the City of Brookville, such as herself have been clear in that. In her opinion it is time the current Brookville City Council and the developer pursue what they have promised the residents and agreed to previously.

Mayor Letner thanked Mrs. Wells for her comments.

Karen Braund, of 15 Heckathorn Road, thanked Law Director Stephan and City Staff for the timely response to her rather lengthy public records request, which she has shared with the residents of the Meadows of Brookville. Mrs. Braund stated she also appreciates Jessica Wells, who has partnered with her in the enlightenment and education of others in the plat. Mrs. Braund stated there are only a couple of people who are on Staff or Council that remember in 2006 when the residents were less than pleased. Mrs. Braund read from the Brookville Charter 1185.02 "REVISION OF PLAT AFTER APPROVAL. No changes, erasures, modifications, or revisions shall be made in any plat of a subdivision after approval has been given by the Planning Commission, and endorsed in writing on the plat, unless said plat is first resubmitted to the Planning Commission." Mrs. Braund stated she spoke to Law Director Stephan yesterday on this topic and he stated he "was aware of this after-the fact." Mrs. Braund stated her question is when was the City aware of covenant changes made by Tim Taylor and Taywood Enterprises on Meadows of Brookville Section Five on September 24, 2015, without City knowledge or approval to downgrade the minimum floor area from 1,500 to 1,400 square feet? Mrs. Braund stated the residents of Meadows of Brookville were informed all covenants pertaining to entire plat were to remain in force with balance of construction back in 2006. This was recommitted to Planning and City Council in 2008 by Taywood Enterprises and Tim Taylor. It seems to be contra to Section 1185.02 as stated above. Mrs. Braund asked as the City is the primary enforcer of our covenants and restrictions, was this legal? What actions is the City undertaking to have Taywood Enterprises and Tim Taylor restore the covenants to the original approved status of 2006?

Law Director Stephan informed Council that Mrs. Braund submitted a public records request regarding the current zoning application and asked for the history of the Meadows of Brookville and a list of documents related to that, which she was provided. The Meadows of Brookville Subdivision, Section Five was approved January 16, 2006 by Planning Commission and on February 7, 2006 by City Council. The covenants of the Meadows of Brookville, Section 5 plat as filed provided for a minimum floor area of 1,500 square feet for a single-story residence and 1,700 square feet for a two-story residence. This was the same square footage that was previously set forth in Sections 1 through 3 in the Meadows of Brookville subdivision. The covenants state that it can be amended by written consent of 67% of the owners of record. Law Director Stephan stated

with respect to the Meadows of Brookville, Section 5, the sole owner is Taywood Enterprises, except for one lot that is currently owned by Mrs. Braund and her husband. On September 24, 2015, Taywood Enterprises filed an amendment to covenants. This amendment was signed by them as the owners of the lots. It amended Section 2 to reduce the minimum square footage from 1,500 square feet to 1,400 square feet. That amendment was filed with the Montgomery County recorder on September 24, 2015. Law Director Stephan indicated he researched Montgomery County records for covenants and found this amendment to the covenants, along with an earlier amendment to the covenants for Section 4. The 1,400 square feet is consistent with the R1-C zoning requirement for single family housing. The issue is that the covenants permit the owners to amend and Taywood Enterprises own more than 67% of the lots in the subdivision. The second issue is whether that in any way violates any previous approvals of Planning Commission or City Council with respect to that plat. Law Director Stephan stated the bigger issue is if you look at the earlier sections of the Meadows of Brookville, they were all 1,500 and 1,700 square feet. As the property owners are the primary enforcers of the covenants, they have rights to enforce the covenants. The covenant was amended pursuant to the terms that were filed on the original plat. They followed the amendment process. We are going to review whether there were statements made in the Planning Commission or City Council approval that specifically required that square footage. And will also review any application or any other information we had at that time that specifically said that would be the square footage. Law Director Stephan advised we will look at what our options are legally, but they followed the process set forth in the covenants for amendments. Law Director Stephan stated he hopes this answers Mrs. Braund's question.

Mrs. Braund stated it does, she was more interested in getting this on record for the City Council and Planning Commission. Mrs. Brand stated the largest concern of the residents is your word, is your word binding, and if there are time constraints or conditions on promises. There have been multiples made by Tim Taylor and Taywood of which she knows Law Director Stephan plans to enlighten City Council on. She thinks there is potentially something there that would void all of this. She is not interested in re-litigating 2006 once again. She is interested in putting this to bed once and for all so that the blood pressure of the 92 individuals that live here don't go through the roof yet again. Mrs. Braund advised she would like to make the Council aware that there was a resident meeting last night of the Meadows of Brookville and there will be an opening statement presented at the joint meeting. There will also be a presentation of a petition signed with requests of the City, the Council and Planning after all residents have had an opportunity to speak and be heard. Mrs. Braund stated they continue to gather signatures. A final tally, complete with copies, will be presented on October 22, 2020 at the joint meeting. There are some items that they as citizens are looking for Council to uphold as was previously stated in meeting minutes and promised to the residents. Mrs. Braund stated we live by what is read in the meeting minutes. If there is a promise made, we move on.

Mayor Letner advised Mrs. Braund that Council gets the gist of her concerns but her time limit to speak has expired.

Mrs. Braund stated she just had one other question relating to the due diligence.

Mayor Letner stated he thinks these things can be answered at the Public Hearing on October 22, 2020.

Motion by Fowler, second by Wilder to adjourn. All yeas, motion carried.



Kimberly Duncan, Clerk

Charles Letner, Mayor