

2311

BROOKVILLE CITY COUNCIL
REGULAR MEETING
November 6, 2007

The Regular Meeting of the Brookville City Council was called to order by Mayor Seagraves at 7:30 p.m. on November 6, 2007 in the City Council Chambers. The pledge of allegiance was recited. Members Cantrell, Duncan, Garber, Hanos, Reel and Ullery; Manager Wright, Assistant Manager Sewert, Police Chief Preston, Fire Chief Nickel, Law Director Stephan and Director of Finance/Clerk Keaton were present.

Motion by Duncan, second by Reel to accept the Agenda with additions. All yeas, motion carried.

Motion by Reel, second by Hanos to accept the October 16, 2007 Regular Meeting Minutes as presented. All yeas, motion carried.

Lori McKinley, representing Joe's Breakfast Club, requested approval to hold a Christmas caroling event on Sunday, December 9 beginning at 6:00 p.m. The Club would provide wagons which would travel from K's Restaurant, across Arlington Road to McMaken's, to Wolf Creek Street to the Brookhaven Nursing facility.

Chief Preston commented that this event was well attended last year, and there were no problems.

Motion by Duncan, second by Ullery to allow Joe's Breakfast Club to hold a caroling event on Sunday, December 9 as requested. All yeas, motion carried.

Gary Keller, of 5778 Sulpher Springs Road, stated he owns the property at 100 and 104 N. Wolf Creek Street. Mr. Keller asked when does it become the City's responsibility to clean up sewer damage in a home? Mr. Keller stated this particular home has had the sewer back up on two separate occasions, once in 2003 and again just recently.

Manager Wright stated the City will pay for damages if the City is negligent. If the City is not negligent, the City does not pay. The City was not negligent with this sewer backup.

Mr. Keller commented that he was advised by Mr. Brandt that there is an elbow in the manhole.

Jamie Keller, of 5778 Sulpher Springs Road, stated that her husband did speak with Manager Wright on the telephone and that she left a message for the Mayor to call her, which she still has not received a call back. Ms. Keller stated their sewer, at this location, has backed up on two separate occasions. Ms. Keller stated that Mr. Brandt advised her that someone down the road had a blockage.

Mayor Seagraves stated he was given the phone message and when he met with Manager Wright on this situation, he was advised not to call her back because the Keller's were going to speak with their attorney.

Law Director Stephan stated he met with Manager Wright and Service Superintendent, Ron Brandt on this situation, and it is our opinion that this sewer backup is not the result of any negligence of the City. Law Director Stephan also stated that the City may have immunity under Chapter 2744 of the Ohio Revised Code for any damages arising from the sewer backup. Law Director Stephan stated he is willing to speak with the Keller's or their legal counsel at a later time.

Mr. Keller stated he is aware that other homes that had sewer backups in the past were paid for by the City.

Manager Wright stated he is aware of one or two similar situations, and the City was at fault for those sewer backups.

Ms. Keller stated when the City blew the sewer lines in 2003 and 2007, that is when the sewer backed up into their property, why is that their responsibility? Ms. Keller commented that they probably won't be able to sell their property now since they are aware of the sewer problem.

Member Ullery commented that he would like to learn more about the situation. He cannot make judgement at this time.

Manager Wright reported the City is currently wrapping up a couple of projects. Manager Wright stated the Church/Orchard Street reconstruction project should be completed in two to three weeks.

Manager Wright announced leaf pickup is going well. We are picking up leaves on a daily basis. Next week we will begin to work longer hours and possibly weekends to keep up with the falling leaves.

Manager Wright reported the City participated with the Municipal Auction this past weekend and we did very well. We grossed just under \$13,000.

Manager Wright requested approval to enter into a contract with the Montgomery County Public Defender for 2008.

Motion by Garber, second by Ullery to authorize Manager Wright to enter into a contract with the Montgomery County Public Defender for 2008, at a cost of \$129.91 per case for which the Public Defender provides representation, as recommended by Manager Wright. All yeas, motion carried.

Manager Wright reported the annual Pumpkin Walk was a very nice event this year with great weather and a great turnout. Manager Wright thanked the various Service Organizations and Five Rivers Metro Parks, who provided horse drawn wagon rides through the park.

Member Garber inquired on the shaft problem at the Waste Water Treatment Plant.

Manager Wright reported the shaft has been repaired and is back in service. It was down less than a week.

Fire Chief Nickel reported he took two classes this past week, High Rise Command and Control and Advanced Media. Fire Chief Nickel indicated that he will participate in an eight-hour fire inspector in-service training tomorrow.

Fire Chief Nickel reported the Brookville Fire Department has completed its annual fire engine pump testing, with all engines passing. However, Engine 76, the 1986 Pierce, had to go in for repairs today. The older tanker was not tested because it is in the process of being replaced.

Fire Chief Nickel reported the new tanker should go on the line next week to have the body installed. We should take delivery some time in December, which is later than we anticipated.

Fire Chief Nickel reported the annual hose testing is completed and with the City completing its hydrant flushing program, the Fire Department will now do some isolated flow testing to determine the effects of the improvements to the system that have been made.

Fire Chief Nickel reported the 2008 Fire Prevention Parade is set for October 4. The Antioch Shriners have committed to participating in the parade again next year. Fire Chief Nickel commented the Brookville Fire Department and the Brookville Historical Society are reviewing records to see if the Brookville Fire Department will be observing its 125th Anniversary of the Brookville Fire Department in 2008.

Fire Chief Nickel reported the Clayco project is at the point where the Brookville Fire Department will be spending a great deal of time there inspecting the sprinkler installation. Fire Chief Nickel reported there are 17 separate systems that need inspected and tested. Fire Chief Nickel commented as more and more of the building systems come online, they will be inspecting those also.

Fire Chief Nickel provided a detailed 2006 fire data report from the Internet, which shows the Brookville Fire Department on course with the national average on Fire Department calls in 1980 and 2006.

Mayor Seagraves recessed the Regular Meeting of Council at 8:00 p.m. for the Public Hearing, which is a combined meeting with Council and Planning Commission, on proposed Ordinance No. 2007-20, which rezones 201 Sycamore Street, being 1.674 acres (Parcel ID C05 00114 0001) and 0.260 acres (Parcel ID C05 00203 0033), from its present zoning classification of I-1, Light Industrial District to the new classification of OR (PD) Office Residential Planned Development Overlay District, pursuant to the zoning ordinances of the City of Brookville, Ohio.

The Public Hearing was recorded and is on file with the Clerk at the Municipal Offices.

Clerk Keaton announced a Legal Notice was published in the October 24 and October 31 editions of the Brookville Star advising of this Public Hearing. Certified letters were mailed to 11 surrounding property owners. The City Office did receive one telephone call from an individual who received a letter. That individual did not indicate if he was in favor or opposed to the rezoning. No one stopped in the office to review the proposed Ordinance.

Law Director Stephan stated the property at 201 Sycamore Street that is being considered for rezoning consists of two separate parcels, .26 acres that has an existing office building on it and another parcel containing 1.674 acres. The applicants are Allen and Michelle Thrush, dba Thrush Rentals, LLC and they are proposing to build a four-unit multi-family building and a nine-unit multi-family building on this 1.674 acre parcel. In an Office Residential zoning district, a four unit multi-family building is a Permitted Use and a nine unit multi-family building would be a Special Use. With respect to the Site Development regulations for OR, the units would meet the minimum floor area of 900 square feet for a two-bedroom apartment. The minimum lot area for multi-family units of 5,600 square feet per dwelling unit will also be met. With respect to the setbacks, all of the setbacks are met except for the front setback. The proposed plan has a 20' front setback instead of the 25' front setback requirement.

Clerk Keaton administered the Oath of Witness to those individuals who wished to participate in the Public Hearing.

Allen Thrush, owner of Thrush Rentals, stated he owns the property at 201 Sycamore Street. Mr. Thrush indicated that Thrush & Son will maintain the private drive, parking area and all common areas. The private drive, that is currently in place, will also be access for the existing building to the rear of the property. Mr. Thrush stated Key Electric currently leases the existing building. Maximum height on the proposed buildings will be 28'. The four-family unit will face Sycamore Street. The nine-unit building will sit behind the four-family unit, so from the road, you will not be able to see the nine-unit building. Mr. Thrush stated they are going with a Mediterranean decor, with EFIS on the front and vinyl siding over OSB on the other three exterior walls. They will have all vinyl soffits, aluminum fascia and aluminum gutters. Artistic Homes will be the builder for these two buildings and Thrush & Sons will be doing all of the exterior veneers.

Member Garber inquired why the front setback is 20'. It looks like there is enough room for the required 25' front setback.

Mr. Thrush stated he is going to keep it in line with the existing city buildings and the Kitchen Solvers building. Mr. Thrush stated he thinks it will look nicer by lining the buildings up, but he will do whatever is suggested.

Member Duncan inquired if there will be enough access for fire vehicles to the units.

Mr. Thrush stated the private drive is 25' in width, plus the parking lot.

Member Garber inquired on trash removal.

Mr. Thrush stated he has not decided if he will provide trash cans or a dumpster. He has thoughts on both.

Mr. Thrush stated he will have two parking spaces for each unit. Mr. Thrush stated these units are modeled after the apartments on Coronado. Mr. Thrush stated they want to do a first class operation. The rent will be between \$650 and \$700 a month. Water, sewer and trash is included in the rent. All of the electric and utilities will be underground.

Member Duncan inquired on how much common ground area they would have.

Mr. Thrush stated there will be common ground behind the buildings and to the rear of the property up to the bikeway. A path will be put in that leads to the bikeway.

Mr. Thrush indicated that the commercial building will remain for now. The construction of the buildings will be done as one phase.

Member Duncan inquired if the commercial building leaves, does he have plenty of room to do something else.

Mr. Thrush stated yes, if he wants to.

Member Cantrell inquired if Key Electric has a lot of traffic in and out of there.

Mr. Thrush stated no.

Member Hanos stated at the Planning Commission Meeting, Mr. Thrush indicated he would be storing things back there also.

Mr. Thrush stated if Key Electric ever leaves the building he will probably do that. The options are still open on what he is going to do with the back. A lot will depend on how the rentals go.

Motion by Garber, second by Reel to close the Public Hearing. All yeas, motion carried.

Police Chief Preston presented the Brookville Police Department Call Analysis for October 2007 and the Incident Log from October 16 to November 5, 2007. Police Chief Preston reported the Brookville Police Department responded to 201 Priority 1 calls, 428 Priority 2 calls, and 143 Priority 3 calls. The Brookville Police Department has handled a total of 6,195 calls from January 1 to October 31, 2007, which is a decrease of 600 calls compared to this same time last year. Total reportable incidents are down 18.3% from this same time last year.

Police Chief Preston reported Beggar's Night came and went without any incidents.

Law Director Stephan reported proposed Ordinance No. 2007-21, which is before Council tonight, involves the replat of the old school property on Hill Street. Law Director Stephan stated he was contacted by the surveyor of this property who indicated that Montgomery County Engineers were requesting additional information regarding a 1919 street vacation for approval of the replat. The maps of Montgomery County are presently showing the streets as vacated in 1919, but a copy of the Ordinance vacating the streets is not recorded in the records of Montgomery County. Law Director Stephan stated the City and the Brookville Historical Society researched their records and found a copy of the minutes from the January 7, 1919 Council Meeting and an article from the Brookville Star indicating that the streets were vacated, but a copy of the Ordinance has not been found. Law Director Stephan requested that Council take action tonight to approve Ordinance No. 2007-21 which confirms and ratifies the 1919 street vacation. Law Director Stephan is requesting action tonight so the school can complete the filing of the replat and the sale of the land.

Manager Wright commented that he had a meeting today with Brookville Schools Superintendent, Tim Hopkins. Mr. Hopkins indicated to him that the school has been working on this issue for 14 months, and they have run into many problems; once the issues are resolved, Brookville Schools will market the land.

Motion by Garber, second by Cantrell to read proposed Ordinance No. 2007-21. All yeas, motion carried.

Motion by Duncan, second by Garber to accept the first reading, dispense with the second and third reading and adopt Ordinance No. 2007-21 entitled "AN ORDINANCE CONFIRMING AND RATIFYING THE JANUARY 7, 1919 VACATION OF A PART OF SUMMIT STREET (NOW KNOWN AS MCKINLEY STREET) AND A PART OF ORCHARD STREET, AND DECLARING IT AN EMERGENCY." All yeas, motion carried.

Finance Director/Clerk Keaton presented the October 31, 2007 Fund Balance for review and approval.

Motion by Duncan, second by Garber to approve the October 31, 2007 Fund Balance as presented. All yeas, motion carried.

Finance Director/Clerk Keaton reported the 21st Annual Miami Valley Planning & Zoning Workshop will be held on December 7, and requested authorization for the City to pay the registration fees for those interested in attending.

Motion by Garber, second by Duncan to authorize the City to pay the \$45 registration fee for those members of Planning Commission, BZA, Council and Administrative Staff who are interested in attending the 21st Annual Miami Valley Planning and Zoning Workshop on December 7, 2007 at Sinclair Community College. All yeas, motion carried.

Finance Director/Clerk Keaton reported House Bill 9, which required the City to adopt a Public Records Policy last month, also requires all elected officials or their appropriate designees to obtain three hours of training, regarding obligations under Ohio's Open Records law, approved by the Ohio Attorney General during each term served in elected office. The successful completion by an elected official or an elected official's designee of the training session established by the Attorney General will satisfy the education requirements that the act imposes. The act also requires the State Auditor, in the course of an annual or biennial audit of a public office pursuant to Ohio Revised Code Chapter 117, to monitor the public office for compliance of the act's provisions regarding training and public records policy. Finance Director/Clerk Keaton asked Council if they would like to attend this three-hour session during their term, or would Council like to appoint an appropriate designee?

Motion by Garber, second by Ullery to appoint Finance Director/Clerk Keaton as Council's appropriate designee to attend the certified Public Records training session established by the Ohio Attorney General. Garber yea, Ullery yea, Hanos yea, Reel yea, Duncan yea, Cantrell yea and Seagraves yea. Motion carried with seven yeas.

Finance Director/Clerk Keaton announced Time Warner Cable finds it necessary to adjust their Standard Tier of service effective December 1, 2007. The Standard Cable Service Tier will increase 7½%.

Finance Director/Clerk Keaton requested Council adopt proposed Ordinance No. 2007-22, which approves and adopts the 2007 Replacement Pages to the Codified Ordinances.

Motion by Garber, second by Cantrell to read proposed Ordinance No. 2007-22. All yeas, motion carried.

Motion by Reel, second by Duncan to accept the first reading, dispense with the second and third reading and adopt Ordinance No. 2007-22 entitled "AN ORDINANCE TO APPROVE AND ADOPT CURRENT REPLACEMENT PAGES TO THE CODIFIED ORDINANCES, AND DECLARING IT AN EMERGENCY." All yeas, motion carried.

Finance Director/Clerk Keaton requested an Executive Session on Contract Negotiations and a Personnel Matter to discuss the reappointment of various Board Members.

Mayor Seagraves requested an Executive Session on a Personnel Matter.

Mayor Seagraves reported the Pumpkin Walk was a great event and thanked all of the Service Organizations that participated including Five Rivers Metro Parks.

Mayor Seagraves thanked the Service Department in their efforts with leaf pickup this year.

In Old Business, Member Duncan inquired on the status of the pond at the corner of West Upper Lewisburg-Salem and Arlington Roads.

Assistant Manager Sewert stated they have not met with the developer yet.

In New Business, Member Cantrell inquired when the City will know if the ED/GE Application for Kitchen Solvers is approved.

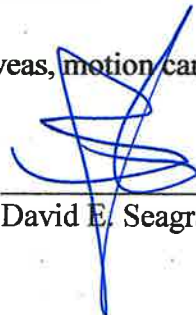
Assistant Manager Sewert stated the Bus Tour will take place on November 28 and the recommendation to the Board will be made on December 7, 2007, so the City should know some time after December 7.

Motion by Garber, second by Cantrell to go into Executive Session on Contract Negotiations and a Personnel Matter as requested by Finance Director/Clerk Keaton and Mayor Seagraves. All yeas, motion carried.

Mayor Seagraves called Council back into Regular Session.

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


Sonja M. Keaton, Clerk


David E. Seagraves, Mayor