

BROOKVILLE CITY COUNCIL  
REGULAR MEETING  
October 18, 2005

The Regular Meeting of the Brookville City Council was called to order by Mayor Seagraves at 7:30 p.m. on October 18, 2005 in the City Council Chambers. The pledge of allegiance was recited. Members Duncan, Garber, Hanos, Reel, Sanders and Ullery; Manager Wright, Assistant Manager Sewert, Law Director Stephan, Fire Chief Nickel, Police Chief Preston and Director of Finance/Clerk Keaton were present.

Motion by Duncan, second by Sanders to accept the Agenda as presented. All yeas, motion carried.

Motion by Sanders, second by Reel to accept the October 4, 2005 Regular Meeting Minutes as presented. All yeas, motion carried.

Mary Hill, of 363 Leisure Drive, commented to Police Chief Preston that there are quite a few cars speeding on Wolf Creek Street between Leisure Drive and Brookside Drive, and many seem to run through the flashing light at Wolf Creek Street and Brookside Drive.

Police Chief Preston stated he will have the Department enforce this area more.

Manager Wright gave an update on the various projects throughout the City. The Albert Storm Sewer Replacement Project is complete. The annual Street Repaving Program will take place this week. The Market Street Project is on schedule and should be completed by October 28.

Manager Wright reported the City received a resignation letter from Prosecuting Attorney Startzman, effective November 1, 2005. Manager Wright commented the City is looking at various options to fill this vacancy. The position will be filled by November 1.

Manager Wright reported DPL Energy has retained a professional consulting firm to conduct a street light audit in the very near future. The audit should confirm the accuracy of the City's street light assets, which will in turn correct any billing discrepancies. Manager Wright stated the City is invited to have a representative observe the work crews who will be completing the audit.

Manager Wright requested an Executive Session on a Real Estate Matter.

Manager Wright reported the leaf collection will commence next week. Leaves will be picked up daily, beginning at one end of the city and working completely through all of the streets before starting the route over.

Member Duncan stated people have been asking him when the second coat of asphalt will be installed on Flanders Avenue, south of Mound Street?

Manager Wright commented the City would like to see the first course of asphalt sit for at least nine months, preferably over the winter. Normally the second coat of asphalt is applied in approximately one year after the first coat.

Member Garber inquired on the status of the Kuhn's Brother log home and the old house that sits next to that Project.

Manager Wright stated the old house will be removed by the end of October.

Assistant Manager Sewert commented he received notice that the floor joists have been ordered for the log home, but reminded everyone that there is an Agreement in place that the exterior of the log home, next to the Interstate, is to be completed by December 15.

Law Director Stephan commented if the exterior of the log cabin is not completed by December 15, as described in the Agreement, we will be in court on December 16.

Member Garber inquired on the status of the water negotiations with the City of Dayton.

Manager Wright commented we have made some progress, but we are still in negotiations.

Mayor Seagraves commented to Fire Chief Nickel, that the Fire Department held an excellent parade.

Fire Chief Nickel stated it was an excellent parade, and thanked the Shriners and all the participants. There was a large crowd turnout, and he has not received any negative comments. Fire Chief Nickel thanked Bob and Sally Batz for organizing the parade.

Fire Chief Nickel reported the Fire Prevention activities conducted at the schools is almost complete.

Fire Chief Nickel presented the Monthly Activity Report for Fire and Ambulance Runs. Compared to last August year-to-date figures, there is a 10% increase in EMS calls.

Police Chief Preston presented an overview of the Incident List and Brookville Police Department Time Analysis from October 4 to October 17, 2005. Police Chief Preston reported there were 283 calls for service in this time period. The number of reportable incidents are up 45 reports or 7.2% and total calls handled are down 1,105 or 13% from this same time last year. The average response time was 2.20 minutes.

Police Chief Preston reported the Police Department purchased a McGruff suit with the funds donated by the Service Clubs and the Neighborhood Watch groups. The suit was used recently at the Westbrook Elementary School for their fall festival and is scheduled to be used again for Halloween.

Police Chief Preston reported part-time Patrolman David Cooper resigned from the Police Department due to health reasons. Chief Preston stated the Department will miss Patrolman Cooper, as he has been with the Department since 1993.

Law Director Stephan presented a few comments on proposed Ordinance No. 2005-10. Law Director Stephan indicated the purpose of the proposed ordinance is to create a licensing procedure for sexually oriented businesses that we currently do not have. It is not the intent of this ordinance to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance which addresses the adverse secondary effects of sexually oriented businesses. The City of Brookville is relying upon studies made by other cities that have identified adverse secondary effects of sexually oriented businesses. The proposed ordinance recites numerous studies and court decisions, restricts hours of operation, establishes a licensing procedure for both the business and their employees, provides for background checks and the ability to verify information. Law Director Stephan stated if facts are presented in a false manner, the license can be denied. The proposed ordinance also provides definitions, establishes a fee schedule and inspections by the Brookville Police Department and the Building Inspector of the City of Brookville. The proposed ordinance addresses the expiration and renewal of license and there is a provision for the suspension and revocation of a sexually oriented license, with appeal rights. Discussion was held.

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. 2005-08, which rezones a certain property located at 19 N. Orchard Street in the City of Brookville, Ohio from its present zoning classification of GB, General Business, to the new classification of R-2, Urban Residential.

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

Clerk Keaton advised a Legal Notice was published in the October 4 and 11 editions of the Brookville Star advising of the Public Hearing. Twenty-three letters were mailed out to the surrounding property owners. The City office received one favorable comment, on the proposed rezoning, from an individual that received a letter. Law Director Stephan commented the proposed Ordinance before Council tonight for the Public Hearing rezones 19 N. Orchard Street

from General Business to R-2, Urban Residential. Law Director Stephan indicated this is based on an agreement the City has entered into with the property owner, Contemporary Cabinets. The business is looking at relocating to another location within the City of Brookville. The agreement provides that Contemporary Cabinets would seek a rezoning of the property. If the rezoning is approved, they would seek Special Use approval from Planning Commission to construct a two-family home on the property. Once the rezoning is approved, Contemporary Cabinets would demolish the existing structure at their expense. In addition, the City will be replatting the lot into a single lot, and acquiring certain additional right-of-way, which allows sidewalk, curb and gutter to be installed in this area. This will extend Church Street all the way to Orchard Street.

Clerk Keaton administered the Oath of Witness to Jerry James of 52 Church Street.

Mr. James stated he lives at the property directly behind the building at 19 N. Orchard Street. Mr. James expressed concern for being able to gain access to his garage located at the rear of his property due to a fire hydrant currently located in the middle of the alley east of his house.

Manager Wright commented the City will relocate the fire hydrant during the extension of the roadway. Manager Wright commented the City will either pave or gravel the alley, once the hydrant is moved.

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

Mayor Seagraves opened the second Public Hearing, which is a combined meeting with Council and Planning Commission, on proposed Ordinance No. 2005-09, which amends Section 1103.03 of the Code of Ordinances to include definitions related to the regulation of sexually oriented businesses and amends the definition of adult entertainment facilities; amends Section 1145.02 of the Code of Ordinances to make sexually oriented businesses a Permitted Use in I-2 General Industrial District; establishes sexually oriented business development standards Section 1145.03(g); amends Section 1137.02(b)(12) to delete adult entertainment facilities as a Special Use within the General Business District; and deletes the Special Use requirements for adult entertainment facilities in Section 1163.03(b)(1).

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

Clerk Keaton advised a Legal Notice was published in the October 4 and 11 editions of the Brookville Star advising of the Public Hearing. One individual came into the office to review the proposed Ordinance. The individual commented she thought there was a pending application for a sexually oriented business in Brookville from the Legal Notice that was published, and she was advised that we did not have any pending application, we are updating our zoning code on sexually oriented businesses.

Law Director Stephan commented proposed Ordinance No. 2005-09 amends our existing adult entertainment zoning regulations. The ordinance is designed to update and improve our existing zoning regulations. The City does not have any pending applications nor do we have any sexually oriented businesses in the community right now. We are doing this to be proactive and anticipate any legal issues that might arise in the event someone would apply for a sexually oriented business permit. It is not the intent of this ordinance to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance which addresses the adverse secondary effects of sexually oriented businesses. The City of Brookville is relying upon studies made by other cities that have identified adverse secondary effects of sexually oriented businesses. The proposed ordinance provides definitions for sexually oriented businesses. The proposed ordinance removes sexually oriented businesses from Special Uses within the General Business District, and makes sexually oriented businesses a Permitted Use within the I-2, General Industrial District. Planning Commission spent a number of meetings reviewing this issue. It was their opinion that it is in the best interest of the community to move these uses from General Business to the General Industrial District. Law Director Stephan indicated by removing the sexually oriented businesses from the Special Use provisions, we're eliminating a potential legal issue with the existing Special Use provisions, which are similar to those that have been found to be unconstitutional cases involving other cities, specifically the City of Troy, Ohio. We are trying to eliminate vagueness that exists in the present Special Use provisions. Sexually oriented businesses would be subject to development regulations.

The overhead screen showed the approximate 19.94 acres that would potentially be available in the Mosier Industrial Park, where sexually oriented businesses could be located. The second overhead screen showed the approximate 12.51 acres in the northwest portion of the Industrial park, north of I-70, which is owned by the City of Brookville, subject to restrictions and covenants. The proposed ordinance requires Site Plan approval.

There were no citizens present who wished to speak at the Public Hearing.

Motion by Duncan, second by Sanders to close the Public Hearing. All yeas, motion carried.

Discussion continued on proposed Ordinance No. 2005-10.

Finance Director/Clerk Keaton reported the City received their audited Financial Statements for the year ending December 31, 2004, and the City received an excellent audit.

Finance Director/Clerk Keaton reported Council is invited to attend the Brookville Chamber of Commerce 2005 Fall Banquet and General Meeting, scheduled for Friday, November 4. The City will pay the reservation for Council Members and Staff. If Council is interested in attending, please contact the City Offices by October 26.

Finance Director/Clerk Keaton reported the 19<sup>th</sup> Annual Miami Valley Planning & Zoning Workshop will be held on December 2, 2005, 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 \$40 registration fee for those members of Planning Commission, BZA, Council and Administrative Staff who are interested in attending the 19<sup>th</sup> Annual Miami Valley Planning & Zoning Workshop on December 2, 2005 at Sinclair Community College. All yeas, motion carried.

Finance Director/Clerk Keaton reported Time Warner Cable will be increasing some of their programming packages beginning December 1, 2005. Council has a copy of the proposed increases.

Mayor Seagraves announced Colonel Wilfred Bristol and Lieutenant Colonel Elizabeth Borelli, have been selected as the representatives for Brookville to enhance relations between Wright-Patterson Air Force Base and the City of Brookville. They will serve as a liaison between the base and the City, and they will attend future Council Meetings.

Mayor Seagraves announced October is designated "National Breast Cancer Awareness" month. Mayor Seagraves commented that Brookville should be proud of all the activities that take place throughout the community to raise funds for breast cancer awareness.

Motion by Reel, second by Sanders to read proposed Ordinance No. 2005-10. All yeas, motion carried.

Motion by Duncan, second by Hanos to accept the third reading and adopt Ordinance No. 2005-10 entitled "AN ORDINANCE ADOPTING CERTAIN BUSINESS REGULATIONS IN THE CITY OF BROOKVILLE, OHIO TO REQUIRE THE LICENSING AND REGULATION OF SEXUALLY ORIENTED BUSINESSES AND THEIR EMPLOYEES." All yeas, motion carried.

Motion by Reel, second by Ullery to read proposed Resolution No. 05-26. All yeas, motion carried.

Motion by Garber, second by Hanos to accept the second reading of proposed Resolution No. 05-26. All yeas, motion carried.

Motion by Sanders, second by Garber to read proposed Ordinance No. 2005-11. All yeas, motion carried.

Motion by Duncan, second by Reel to accept the first reading, dispense with the second and third reading and adopt Ordinance No. 2005-11 entitled "AN ORDINANCE LEVYING SPECIAL ASSESSMENTS FOR THE CONSTRUCTION, REPAIR AND/OR REPLACEMENT OF SIDEWALKS, CURBS AND GUTTERS IN THE CITY OF BROOKVILLE, OHIO, AND DECLARING IT AN EMERGENCY." All yeas, motion carried.

Member Hanos commented she recently heard a new restaurant was opening up at the former Pathway Café on Market Street.

Mayor Seagraves stated El Greco's Pizza Villa, II is opening a restaurant at this facility on November 15, 2005. The owner of El Greco's has this same restaurant on Salem Avenue currently.

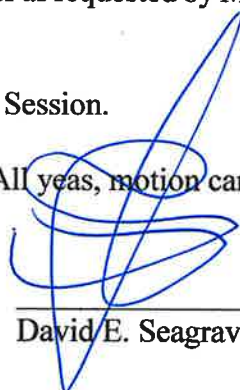
Member Hanos requested an Executive Session on a Personnel Matter.

Motion by Garber, second by Duncan to go into Executive Session on a Real Estate Matter as requested by Manager Wright and a Personnel Matter as requested by Member Hanos. All yeas, motion carried.

Mayor Seagraves called Council back into Regular Session.

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

  
\_\_\_\_\_  
Sonja M. Keaton, Clerk

  
\_\_\_\_\_  
David E. Seagraves, Mayor