

MINUTES OF SPECIAL COUNCIL MEETING
CITY OF UNIVERSITY HEIGHTS
AUGUST 23, 2010

Mayor Infeld called the special meeting to order at 7:30 p.m.

Roll Call: Present: Mrs. Frankie B. Goldberg
Mr. Steven D. Bullock
Mr. Kevin Patrick Murphy
Mr. Frank Consolo
Mr. Steven Sims
Mr. Phillip Ertel
Mrs. Susan D. Pardee

Also Present: Law Director Kenneth J. Fisher
Clerk of Council Nancy E. English
Finance Director Jennifer Esarey
Chief of Police Gary Stehlik
Fire Chief John Pitchler
Service Director Christopher Vild
Building Commissioner David Menn
City Engineer Joseph R. Ciuni

Agenda Items:

A. Appeal to the Board of Zoning Appeals decision of June 16, 2010 regarding the approval of the application by John Carroll University for a transitional use special permit in order to use the residential property located at 4070 Carroll Blvd. for offices and administrative activities for the ROTC with conditions

At its meeting on June 16, 2010, the Board of Zoning Appeals (BZA) passed the following motion with respect to the application of John Carroll University:

“MOTION BY MR. COZZENS, SECONDED BY MR. ADANTE to grant a transitional use Special Permit to John Carroll University for the property located at 4070 Carroll Blvd. to be used to house the ROTC and academic offices of the Department of Military Science, subject to the following conditions: hours of operation shall be from 6:00 a.m. to 6:00 p.m. with limited use of the building granted to normal business occupants during off hours; there shall be no military vehicles at the property; and occupancy of the building shall be as recommended by the Building Commissioner and Fire Chief. On roll call, all voted ‘aye.’”

An appeal to the BZA decision of June 16, 2010 regarding John Carroll University’s request for transitional use of 4070 Carroll Blvd. for ROTC facilities was filed by Michael M. Kirincic, 4206 Carroll Blvd., Pat Murphy, 4090 Carroll Blvd., Chris Salata, 4096 Carroll Blvd., Joe Farchione, 4166 Carroll Blvd., Marty Burke, 4190 Carroll Blvd., and Pat O’Shaughnessy, 2624 Kerwick Road on June 25, 2010.

Law Director Kenneth J. Fisher read a memorandum dated August 4, 2010 from Building Commissioner David S. Menn, which gave an overview of the request of John Carroll University, which is included herein in its entirety:

“1. The Property.

John Carroll University (“JCU”) purchased the property located at 4070 Carroll Boulevard (PPN 721-06-007) (the “Property”) on December 20, 2006 for \$320,000.00. It does appear that real estate taxes are currently being paid by JCU on the Property.

2. Board of Zoning Appeals Application.

On May 19, 2010, JCU filed an application for a Special Use Permit (Transitional Use) with the Board of Zoning Appeals (“BZA”) pursuant to City of University Heights Codified Ordinances Section 1244.03(c)(3). Codified Ordinance Section 1244.03(c)(3) does not permit the BZA to refer an application for Special Use Permit (Transitional Use) to the Planning Commission.

The application was placed on the BZA agenda for June 9, 2010.

3. BZA Meeting - June 9, 2010.

Upon request from Mayor Infeld, the members of the BZA tabled JCU's application for a Special Use Permit (Transitional Use) until the special BZA meeting scheduled for June 16, 2010 at 8:00 a.m. The application was tabled as Mayor Infeld had scheduled a community meeting for 7:00 p.m. on June 14, 2010, in order to hear from the neighbors. A motion was made and approved by the members of the BZA to table the application until the June 16, 2010 special BZA meeting.

4. Community Meeting held on June 14, 2010.

5. Board of Zoning Appeals Meeting - June 16, 2010.

The BZA heard the application of JCU for a Special Use Permit (Transitional Use) regarding the Property and its proposed use for ROTC administrative services. A motion was made and approved granting a Special Use Permit (Transitional Use) to JCU subject to the following conditions.

- Hours of Operation: 6:00am-6:00pm with limited use of the building granted to normal business occupants during off hours
- No military vehicles are to be on the Property.
- Occupancy of the building shall be as recommended by the building and fire departments. All voted "Aye".

6. June 25, 2010.

Pursuant to City of University Heights Codified Ordinances Section 1244.08(a), a written appeal of the BZA's decision granting JCU a Special Use Permit (Transitional Use) to use the Property as ROTC administrative offices to Council was submitted by Michael M. Kirincic of 4206 Carroll Boulevard, Pat Murphy of 4090 Carroll Boulevard, Chris Salata of 4096 Carroll Boulevard, Joe Farchione of 4166 Carroll Boulevard, Marty Burke of 4109 Carroll Boulevard and Pat O'Shaughnessy of 2624 of Kerwick Road."

Mr. Fisher also reported that he received a letter from Craig S. Miller, Esq., Ulmer and Berne, LLP, legal counsel for John Carroll University, requesting that all witnesses to testify at this meeting be sworn and all testimony be given under oath. Mr. Fisher advised that it is not the usual procedure of Council to require individuals addressing the Council to take an oath. He added that many people are residents, who will only state their opinions; and, therefore, residents who speak will not be required to take an oath.

Ms. Dora Pruce, director of Government and Community Relations, Ms. Carol P. Dietz, P.E., associate vice president of Facilities, LTC Donald Hazelwood, professor/chair Department of Military Science, and Ms. Maria G. Alfaro-Lopez, Esq., general counsel, John Carroll University (JCU), were present to represent the university.

Ms. Pruce stated that they will explain why they believe the proposed use of 4070 Carroll Blvd. for the Department of Military Science offices is an ideal transitional use for the proposed location.

Ms. Dietz reviewed history and background of property in question. She noted that John Carroll University purchased the property at the request of the previous owner. She added that the university purchased it because the property was adjacent to the university and it was a large 6,000 sq. ft. two floor duplex building directly across the street from the Dolan Science Center and adjacent to the parking lot and Fairmount Circle commercial property.

Ms. Dietz noted that 4070 Carroll Blvd. is located in a U-2, Two-Family Residence District and is surrounded on three sides by higher use zones: the U-5, University College District is directly across the street; the U-3, Automobile Parking District is west of the property; and U-7, Local Retail District is adjacent to the U-3; and U-3 and U-4, Multi-Family Districts are across the street. Ms. Dietz showed photos of the property and views from the subject property showing the parking lot to the west, Mr. Tire on Warrensville Center Road to the north, Milford Rd., and the Dolan Science Center and its east parking lot.

Ms. Dietz stated that the university considered various options for the property such as housing facility members or up to six (6) students. However, it was determined that the space would best be used by the university as ROTC office space because it is a 6,000 sq. ft. building with an open floor plan and it would be the perfect transitional use and serve as a buffer from the commercial area to the U-1, One-Family Residence District. She noted that if approved, the use at the property would be of low activity and will be utilized by ten (10) faculty members, an administrative assistant, and a few visitors meeting with the staff during normal business hours. She noted that the property will retain its residential appearance on the exterior, except they may add a flag pole. She added that they intend to install new windows, a new roof, and perhaps a new driveway. The first floor would be made ADA accessible.

Ms. Dietz stated that the relocation of the Department of Military Science will allow enhancement of the ROTC program and permit the needed improvements to the recreation center. The office relocation would also allow JCU to continue its work with the City and the greater community to maximize the potential of the Fairmount Circle retail district and to buffer the residential area to the east.

Ms. Dietz noted that the university's application summarizes the function and appearance of the subject property if the transitional use is approved. She pointed out that staff and student parking will be confined to the university's parking lot across the street, adjacent to the Dolan Science Center. She pointed out that no weapons would be used or stored in the building, no classes would be held in the building, and no military training or exercises would be conducted in the building. Ms. Dietz commented that the interior of the building will be upgraded to comply with all code requirements, energy efficiency of the building will be improved, as well as upgrades in fire protection, electrical and data distribution systems.

Ms. Pruce noted that John Carroll University's ROTC program serves John Carroll University, Case Western Reserve University, Baldwin Wallace College, Cleveland State University, Hiram College, Notre Dame College, Oberlin College, and Ursuline College. She added that the program brings approximately \$1.68 million annually to Northeast Ohio economy and \$680,000 in scholarships are brought in through the program. She also noted that the cadets also receive a monthly stipend which impacts the local economy. Ms. Pruce requested that the Council act favorably upon the request for a transitional use special permit.

Chief of Police Gary Stehlik stated that the police department had no issues.

Fire Chief John Pitchler stated that the fire department had no issues.

Service Director Christopher Vild, Building Commissioner David Menn and City Engineer Joseph R. Ciuni had no comments.

Councilman Consolo inquired what the square footage of the building would be after the reconfiguration. Ms Dietz responded that they do not intend to add to the building, but rather, will utilize the existing 6,000 sq. ft. Mr. Consolo also inquired as to the minimum space requirement for the Department of Military Science. Ms. Dietz replied that the department requires the entire 6,000 sq. ft. of the building. Mr. Consolo asked if there were drawings of the proposed reconfiguration. Ms. Dietz stated they only have a concept at this point. He also asked about trash collection. Ms. Dietz assumed trash would be collected in the same manner as the two residential houses that the university owns on South Belvoir Boulevard, which function as offices.

With regard to the property tax issue, Councilman Consolo asked if a property tax exemption request would be made for educational purposes. Ms. Dietz replied that she was not prepared to discuss the issue and could not respond to the question. Mr. Fisher stated that it was his opinion that the property would not come off the tax duplicate because the university has not made a request for rezoning to the U-5, University College District; therefore, the property will remain in the U-2 district.

Councilman Sims requested more detailed information on how the program contributes \$1.6 million to the local economy. Ms. Pruce responded that a portion would be the scholarships provided to the cadets through the ROTC program, the \$500 stipend the cadets receive, and the funds the students contribute to the local economy through spending.

Mr. Sims asked where the ROTC exercises are conducted. Ms. Pruce replied that the exercises are conducted in the athletic complex and on the athletic fields. She added that those activities will remain in those locations even if the permit is granted. Ms. Pruce stated that the building is proposed to be used strictly for offices.

In response to questions from Councilman Consolo, Ms. Dietz noted that the building would consist of 6-8 offices, a conference room, reception area, kitchenette, and upgraded restroom facilities. It was pointed out that an elevator is not planned for the building, but the first floor would be ADA accessible.

Councilman Ertel inquired as to how many individuals will be housed there. Ms. Dietz replied that currently there is a staff of ten (10) which may increase up to thirteen (13). She also reiterated that the all staff and students would park on campus in the Dolan Science Center east parking lot across the street.

Vice Mayor Goldberg inquired if the Green Road Annex could be used for the administrative offices of the ROTC. Ms. Dietz responded that the Green Road Annex is not suitable for an academic offices because it is more than one-half mile away from campus and they prefer the offices to be on campus or adjacent to campus so that the faculty and students can walk between the facilities. She explained that the Community Outreach offices, which work with the school system for K-12, are housed at the Green Road Annex. She added that JCU students do not utilize the annex on a day to day basis because it is too far from campus. She mentioned that the students use the annex for recreation and social activities in the evenings and on the weekends.

Vice Mayor Goldberg inquired if classes will be held in the subject property. Ms. Dietz clarified that classes would not be held in the building, rather it would be used for department offices only and the faculty would walk over to the campus for classes.

Councilman Bullock asked why the representatives from JCU could not respond to the question regarding property taxes. Ms. Dietz stated that she did not have authority to speak to the taxes. Mr. Bullock inquired if the university intends to file for property tax exemption. Mrs. Alfaro-Lopez stated that the property is zoned U-2 and the taxes are currently being paid on the property. She noted that if the transitional use special permit is approved and the property becomes an education use, and if the university decides to petition for exemption, they will go through the appropriate processes. Mrs. Alfaro-Lopez stated that to date the university has not discussed taking the property off the tax duplicate. However, she added that if the property is a wholly educational use that the university could look at the possibility of filing a petition, and at that point, the City and whomever else could object.

Councilman Consolo inquired if JCU would waive its rights to raise a legal argument regarding property taxes if the Council placed a condition on the transitional use special permit that the taxes be paid and if they are not paid that the transitional use special permit be rescinded. Mrs. Alfaro-Lopez stated that property taxes is not a matter of local concern and that the State is the only body which has the authority to make a determination as to the appropriateness of real estate taxes. She stated that at this point they would not agree and it would not be appropriate as a quid pro quo to enter into an agreement that is broader than the commitment to use the property in conformity with the ordinances. She added that such a requirement would be beyond the scope of the Council to require and is inappropriate from a legal standpoint. Mrs. Alfaro-Lopez asked that Council not exceed its authority. She added that the university would be agreeable to maintaining the property within the constraints of the ordinances. Mrs. Alfaro-Lopez asked that the transitional use special permit be approved on the basis of that representation.

Jo Ann Ruggeri, 2627 Kerwick Rd., commented that she moved on Kerwick Road knowing there was a university here, but also knowing that there were zoning laws which protected her rights. She does not feel that is the case any longer. Mrs. Ruggeri stated that during the last meeting it was brought up that students from other universities will also be visiting the offices and would generate traffic of 50 to 100 people per day. She requested that the Council uphold the zoning laws and consider the traffic that the proposed office would generate because it would add an excessive amount of people in a residential area.

Harriett Udelson, 4110 Hadleigh Road, asked what the university is doing with the Green Road Annex. Mayor Infeld noted that the issue before the Council is the property at 4070 Carroll Boulevard.

Patrick O'Shaughnessy, 2624 Kerwick Road, appellant/petitioner, stated that he is appreciative of John Carroll University and the money it bring into northeastern Ohio. He was also supportive of the ROTC, but noted that the proposal to use 4070 Carroll Blvd. would not be in harmony with the neighborhood. Mr. O'Shaughnessy offered a brief history of the previous request for a special permit for said property, which the Board of Zoning Appeals referred to the Planning Commission. After which, JCU appealed that decision, but before the Planning Commission could here the issue, the university withdrew its application and re-filed for a transitional use special permit under another section of the code which did not allow the Board of Zoning Appeals to refer the matter to the Planning Commission.

Mr. O'Shaughnessy stated that this is not a singular issue of the house at 4070 Carroll Blvd., but rather it is an issue of the thirty-four (34) houses and apartment buildings that JCU owns in the surrounding neighborhood and what they plan to do with those properties. He noted that granting the permit is not in harmony with the neighborhood. He added that the residents strongly believe the BZA was limited to look beyond the scope of the subject property and was not able to make a reasonable and fair determination of the request. Mr. O'Shaughnessy stated that what the residents are asking and seeking through this appeal is for Council to take the opportunity to go beyond this request and refer the issue to the Planning Commission so that a comprehensive review and understanding of the future and determine what the plans are for the remaining homes which the university has land banked.

Mr. Fisher advised that the action taken by the Board of Zoning Appeals on June 16, 2010 was proper as the BZA had jurisdiction to consider the transitional use under Section 1244.03(c)(3) of the Codified Ordinances.

Joe Farchione, 4166 Carroll Blvd., agreed that the BZA had jurisdiction to grant the transitional use. He stated that was the residents' contention that the arguments raised were outside of the scope of the BZA's charge, but the Council has the ability to go beyond that scope to perhaps look at other properties owned by JCU.

Mr. Fisher read the definition of transitional use as defined in Section 1244.03(c)(3) of the Codified Ordinances, "In any district within 150 feet of the boundary of a less restricted district, the Board may approve any use which the Board deems to be a suitable transitional use between the more restricted and the less restricted district in question, provided, however, that there is no existing occupancy between the site of the proposed use and the less restricted district boundary line which will be seriously injured by the proposed transitional use."

Mr. Fisher also read Section 1244.03(b)(1) of the Codified Ordinances which deals with harmony, "The location, size and character of the proposed use is such that, in general, it will be in harmony with the existing development of the district in which the site is situated and will not hinder or discourage the appropriate future development and use of land and buildings in the vicinity or impair their value, and will not conflict with the aims and goals of the General City Plan."

He also read Section 1244.03(b)(2) of the Codified Ordinances which deals with hazards, "If the proposed site is in a residence district, the proposed use will not result in hazard to pedestrian traffic, especially to children; the height, bulk and location of buildings and the nature, height and location of walls and fences and the extent and character of the landscaping are such that the development will be in harmony with residential community."

Councilman Consolo asked what it means to transition from one use to the other. He was also concerned that the language addresses a district rather than just the site and if approved that the transitional use would carry over as a future precedent for that district throughout the whole city. Mr. Consolo expressed concern that the approval would create a "snowball effect" within the district. Mr. Fisher stated that is a consideration, and would raise a question as to the property next door. He mentioned, however, that the subject property has it own characteristics and is next to commercial parking lot. Mr. Fisher advised that the Council would have to consider the criteria and the impact the ROTC offices would have on the adjoining districts. Mr. Consolo asked if transitional use has been used in the past. Mr. Fisher answered that it has been used, but he would have to research to determine exactly when it was used.

Chad Arfons, 2376 Fenwood Rd., commented that John Carroll University's outreach into the community has a stabilizing affect to the community. He noted that it is common in inner ring cities for homes between residential areas and commercial areas to be used as offices. He noted that the property in question would be an appropriate transitional use because it acts as a buffer from the heavily used commercial district and the next property could not make that statement. Mr. Arfons also noted that JCU maintains its properties and employees people in University Heights.

Marty Burke, 4190 Carroll Blvd., in regard to the domino effect, stated that the residents know what happened on Milford Road as JCU purchased house, after house, after house. He noted that they are fearful that it could happen again. Mr. Burke inquired if JCU was implying that it was because of the proposed use that the money was coming into the community. It was his belief that the federal funds were already coming into the community whether or not 4070 Carroll Blvd. is used for the ROTC offices.

Mr. Burke presented several pages of a petition to the Council with sixty (60) signatures of residents on Carroll Blvd., Hadleigh Road and Kerwick Road, which reads, "Petition to the City Council of University Heights. We the neighbors of Carroll, Hadleigh and Kerwick, state and request of Council the following: We do support and encourage the growth of JCU as an integral part of University Heights. We believe that a JCU can grow and prosper in harmony with the citizens of University Heights provided that there is open and honest discussion. The current request of JCU provides the opportunity for Council to seek that open and honest discussion. We request the Council to enter into a comprehensive master plan of growth with JCU that balances the needs of the citizens of University Heights and JCU. We specifically request that the Council refer the current request of JCU to the Planning Commission, so that all reasonable and relevant information relative to the growth and needs and plans of JCU are considered, as are the needs of University Heights and its citizens. This is the definition of harmony."

Robert Ruggeri, 2627 Kerwick Rd., stated that the residents were told by representatives of JCU at the Mayor's community meeting on June 14, 2010 that the building in question would have very limited access to the building. But, at the Board of Zoning Appeals meeting on June 16, 2010 it was reported that there could be a large amount of people at the building and it would have students from several other colleges served by the offices and coming in for visits. Mr. Ruggeri noted that the influx of traffic to the area would cause a huge detriment to the safety of the children of Gesu School. He just wanted John Carroll University to be honest with the City and the residents and reveal what its plans are.

Paul Miller, 2370 Charney Road, commented that he is familiar with the former Temple Emanu El building, now known as the Green Road Annex, and he noted that part of that building is perfect for administrative offices. He added that the building may be away from campus, but it is easily accessible.

Pat Murphy, 4090 Carroll Blvd., stated that the Council has to weigh what is the right thing to do versus what is legally appropriate to do under the ordinances. He questioned what harm could be caused by delaying a decision until the Council has gone through a thorough planning process. He added that perhaps the tax issue could be resolved during that planning process.

Thomas Monroe, 2604 Kerwick Road, stated that the representatives from JCU only showed photographs of the parking lots when showing views from the subject property. He noted that they did not show the view east, where the single family homes are located. He mentioned that Carroll Blvd. and Hadleigh Road are beautiful streets and they should have shown those views as well. Mr. Monroe requested that the process be slowed down and a more comprehensive approach be utilized.

Councilwoman Pardee requested clarification on the amount of traffic that would be generated at the proposed offices. Ms. Dietz replied that in an average day less than twenty (20) people would come and go for the building over the course of the day. She pointed out that they would not all be there at the same time. She added that at the BZA meeting a question was raised about the number of people in the building and she said 20 to 30, but she stated that they will comply with the building occupancy. Ms. Pruce reiterated that the staff and students will park in the Dolan Science Center parking lot and walk across the street to the offices.

Councilman Consolo inquired as to the purpose of the second story signage. Ms. Dietz stated that it is a concept. She mentioned that the university would have to go through the sign application process. She also noted that the signage would be similar to that on the counseling center building on South Belvoir Boulevard.

In regards to the planning process, Ms. Dietz noted that they presented this request to the University Affairs Committee of Council 18 to 24 months ago and identified the address as a potential office use at that time. Ms. Dietz stated that the university is a business and it has to find space for offices and students, and the delays are causing the university to struggle in meeting its needs.

Councilwoman Pardee asked the Law Director if the Council could place additional conditions on the transitional use permit if they uphold the decision of the BZA. Mr. Fisher replied that additional conditions could be placed on the permit. He noted that the BZA placed the following conditions on its approval: hours of operation shall be from 6:00 a.m. to 6:00 p.m. with limited use of the building granted to normal business occupants during off hours; there shall be no military vehicles at the property; and occupancy of the building shall be as recommended by the Building Commissioner and Fire Chief. Mrs. Pardee noted that the BZA did an excellent job in establishing the conditions.

She also stated that everyone agrees that John Carroll University has been a significant asset to the city, but there is fear and frustration as to the planning process. Councilwoman Pardee suggested that the Council consider upholding the transitional use special permit, with the following additional conditions: to require from John Carroll University within three months to submit a list of its top four (4) priorities in development outside of the University College District, but within University Heights and to present a 24-month plan for homes that it owns.

Councilman Sims inquired as to when the university is planning to occupy the building if the permit is upheld. Ms. Dietz replied by January 15, 2011 before the start of the spring semester. Mr. Sims mentioned that alternative properties have been mentioned during the meeting. He asked if the university considered space in the Fairmount Circle commercial property for the ROTC offices. Ms. Dietz responded that they did not consider it because there is not 6,000 sq. ft. available and it is not an appropriate use for that property. She added that the university is trying to develop the commercial retail space at Fairmount Circle.

Mr. Sims requested that Ms. Dietz speak to the comments about the potential for a domino effect with respect to the proposed transitional use leading to other transitional uses along Carroll Boulevard. Ms. Dietz stated that JCU has no plans to acquire any more houses on Carroll Boulevard. She mentioned that it owns 4174 Carroll Boulevard and a few others on Carroll Blvd. between Kerwick and South Belvoir, but none between 4070 and 4174 Carroll Boulevard. Mr. Sims asked whom at the university has the authority to make a formal agreement with the City about not purchasing any more homes on Carroll Blvd. Mrs. Alfaro-Lopez replied that the president of the university, Father Robert L. Niehoff, has that authority. However, she noted that meetings were held and a list/plan was submitted to the University Affairs Committee over a year ago as to the status and possible uses of university-owned properties. Mr. Sims agreed with Mrs. Alfaro-Lopez about the process to date. He added however that there is a concern that even with that understanding no one knows that there is a commitment or agreement on the part of the university as to where and how it will continue to develop and also that there will be a domino effect with this current request. He added that individual approvals could potentially result in a mishmash of institutional uses in residential neighborhoods. Mr. Sims suggested that Mayor Infeld and Father Niehoff sit down and have a conversation in order to come to a firm understanding that will hopefully lead to an agreement of what will happen on Carroll Boulevard in the future. Mrs. Alfaro-Lopez stated that the university has followed the City's procedures and submitted a plan to the University Affairs Committee which the City has on its website. Mr. Sims stated that he is aware of the map and commended the university for following the process, but he feels the one missing element that is needed is an agreement from the university that there will be no further development on Carroll Boulevard. Councilman Sims suggested that as a condition for the Council to sustain the approval of the transitional use special permit granted by the Board of Zoning Appeals that an agreement be made that there be no further requests for institutional uses on properties on Carroll Boulevard.

Mayor Infeld stated that it is not up to the university to agree, but it is the Council's responsibility to legislate in order to restrict the university in some way.

Mr. Sims stated that a better process would be to come to a consensus and a common understating with the university to accomplish what is in the best interest of everyone. Mayor Infeld noted that she has been meeting regularly with JCU since January. She mentioned that they have been participating in Town Gown Association meetings and will continue to do so. She added this type of organization fosters cooperation and offers best practice models in which to learn from and gain new ideas. Mayor Infeld stated that it is also time for the City to start its own master plan process in order for the City to be eligible for Community Development Block Grant funding. She noted that JCU will be included in this process.

Councilman Bullock stated that he is not interested in restricting John Carroll University except where restrictions are necessary and there are some. He noted that the university should be open to a broader process than what currently exists with this one application and that discussion should entail all the plans the university has in mind for the future. He added that the city should do this as well. Mr. Bullock stated that the City and JCU has to deal with the issue of trust noting several examples. He noted that in the six (6) years he has been on Council he has learned not to trust the university and the university has probably learned not to trust the City. But, he stated that both JCU and the City needs to put past issues behind and think about how to work together for the betterment of John Carroll University, the City of University Heights, and the City of Shaker Heights. Mr. Bullock mentioned that the oldest tactic in negotiations is to leave the boss behind so that nobody can make a decision.

Vice Mayor Goldberg stated that it has been a tug of war between the JCU and the residents for the nine (9) years she's been on Council with the City as the referee. She noted that the University Affairs Committee was very productive and for the first time there was proactive activity with the university rather than reactive. She added that the property in question was listed as one of the university's priorities. Vice Mayor Goldberg mentioned that she also remembered a lot of discussion regarding the play fields and parking lot proposed for Milford Road. She was hoping that the University Affairs Committee would get beyond this piece meal philosophy. In order to do that, she stated that there has to be commitment, trust, and collaboration. Vice Mayor Goldberg stated that everyone wants the university to succeed and strive. She added that there should be collaborations and suggested tuition breaks for University Heights resident. Vice Mayor Goldberg would like a commitment from JCU to focus on one area. She also agreed that John Carroll University needs to collaborate with the City and Shaker Heights on a master plan.

Councilman Murphy stated that the portion of the code that strikes him is that the project will not conflict with the aims and goals of the General City Plan. He noted that it is difficult to make a decision because there has not been dialogue with JCU about the issues that continue to impact the area. Mr. Murphy suggested all impacted parties -- the City of University Heights, John Carroll University, the City of Shaker Heights and the residents -- meet in order to formulate a master plan. However, he suggested that a third party facilitate the meeting because of trust issues. Mr. Murphy hoped that there could be a commitment to sit down and talk. He added that Father Niehoff should participate in the dialogue

Councilman Ertel stated that piece meal development does not work for anyone. He noted that the main issue is not about granting one permit for one building, but rather it is about planning. He liked the idea of having an outside party facilitate the meeting. Mr. Ertel stated that if it gets down to a tug of war, he would have to support the residents. He hoped it would not come down to that. Mr. Ertel was hopeful that they could meet, work the issues out, and move forward.

Mayor Infeld stated that she has been working with the City of Shaker Heights about developing Fairmount Circle.

Councilwoman Pardee stated that she thinks the proposed location is a reasonable location for the ROTC offices. She noted that it would be better to walk across the street from campus than to walk across the city. Mrs. Pardee stated that she is agreeable to planning, but that the Council has a specific BZA issue before it. Therefore, she entertained a motion to uphold the BZA decision with conditions while the planning process is initiated and underway.

MOTION BY MRS. PARDEE to uphold the Board of Zoning Appeals decision of June 16, 2010 granting a transitional use special permit with the following additional conditions: to require from John Carroll University to submit a list of its top four (4) priorities for development outside of the University College District, but within University Heights within three (3) months and a 24-month plan for homes that it owns. MOTION DIED FOR LACK OF A SECOND.

Mr. Bullock suggested that the conditions include a requirement for a serious dialogue regarding a broader plan.

Mayor Infeld expressed her concern about placing conditions on the approval with specific time tables. She added that she is in the process of discussing development of Fairmount Circle with JCU and Mayor Leiken of Shaker Heights because it is a gateway to both cities.

Mr. Ertel suggested the issue be referred to the Planning Commission.

Mr. Fisher advised that the conditions have to be definite such as that there not be parking of vehicles in the driveway or in the garage and that all parking be directed to the Dolan Science Center. Mr. Fisher stated that JCU's 5-year plan was never formally presented to the Council nor approved by the University Affairs Committee or the Council. He noted that the 5-year plan could be formally presented to the City as part of this process. Mr. Fisher stated that the 24-month requirement could not be upheld. He added that condition for no more development on Carroll Boulevard could not be unilaterally imposed, rather any proposal for development would have to go before the Board of Zoning Appeals or the Planning Commission as provided in the zoning code. Mr. Sims stated that no further development on Carroll Boulevard could be agreed upon by both parties. Mr. Fisher concurred that it could be imposed by agreement.

Councilman Consolo mentioned that the University Affairs Committee met with the university with the goal of reaching an agreement. He added that John Carroll University provided everything the committee requested including the proposed 5-year footprint showing its future direction. However, the meetings were deferred in December of 2009 in order to provide the new Mayor the opportunity to meet with John Carroll. Mr. Consolo stated that he did not know what steps the Mayor has taken and asked Mayor Infeld for her recommendation on the proposal for the transitional use.

Mayor Infeld recommended that the Council make the best decision it can. Mayor Infeld added that she had a vote on the project during the Board of Zoning Appeals meeting, but that she did not have a vote at this meeting. Mr. Consolo asked Mayor Infeld why the proposal is in the best interest of the City. Mayor Infeld stated that John Carroll University is an important member of the community, the largest employer in the city, and it needs the space in order to attract students. She added that if administrative office space can be freed up on campus then lounges can be created for prospective students. She also mentioned that the subject property has been empty for a long time.

Councilman Consolo asked Mayor Infeld if she is meeting with John Carroll University with the goal of coming up with a comprehensive long term plan for the area because it would be easier for the Mayor and Father Niehoff to come to an agreement. He added that if that was the case then he would be more comfortable voting on this one proposal. Mayor Infeld did not answer the question directly, but reiterated that she had been continually meeting with JCU and the mayor of Shaker Heights.

Mr. Fisher stated that part of the problem is the uncertainty because there has not been a commitment made by John Carroll University regarding the future use of homes it has acquired and more homes that it may acquire in the future.

Mayor Infeld stated that is it for that reason that she is meeting with the mayor of Shaker Heights and meeting regularly with representatives of the university to come up with a way to redevelop Fairmount Circle in order to make the circle a show piece.

Councilwoman Pardee asked for clarification if she could include the conditions requiring a list of the university's top four (4) priorities for development outside of the University College District, but within University Heights within three (3) months and a 24-month plan for homes that it owns in her motion. Mr. Fisher stated that the City cannot require the university to tell the City what it is going to do with the houses it owns as a condition of approval. He added that it would have to be done by agreement.

Mrs. Alfaro-Lopez stated that the university has been meeting with the City and will continue to work with the City to come up with a plan as to how it will use its properties. She added that the university submitted a document to City that indicates what it intends to do with the properties it own. Mrs. Alfaro-Lopez also stated that John Carroll University is committed to meeting with the City as it goes through its master planning process in order to contribute to the process.

Maureen Browne, 4084 Carroll Blvd., submitted another petition with three more signatures from residents in the area, which included the property owner (Mary Caloudis) immediately adjacent to the subject property requesting that the issue be referred to the Planning Commission. Ms. Browne requested that the neighbors be included in the planning process.

Councilwoman Sims requested an update from Mayor Infeld with respect to her meetings with John Carroll University. He was pleased that a productive dialogue was underway. Mr. Sims stated that he took the position he did because it could be a first step to a common agreement about where development would occur and where it would not occur. Mr. Sims stated that he believes housing is the fabric of the community and the Council has to consider very seriously when deciding about the future of housing stock in the city. He noted that it would be in the best interest of all parties involved to have an agreement about what will and will not happen with the houses on Carroll Boulevard.

Mr. Fisher asked if the university would consider a restriction that there be no additional applications for institutional use on Carroll Boulevard. Mrs. Alfaro-Lopez stated that the university does not own any other property in that area and questioned how far into the future the restriction would be for. She stated that neighbors have come and asked the university to purchase their properties. Mayor Infeld was not comfortable placing a restriction on JCU in terms of its development. She stated that the Council has the authority to make a decision and would be remiss in its duties if it did not make a decision. She added that it is unfair for John Carroll to commit to an agreement at this meeting. Mr. Sims stated that the university did not have to respond to the condition at this meeting, but the approval would not be valid unless it was to respond with a formal agreement stating that it was not going to develop on Carroll Boulevard. Mrs. Alfaro-Lopez stated that the university would be willing to sit down with City officials to discuss how the process would work. But, she requested that the Council proceed with the transition use request currently on the floor.

Mr. Ertel suggested that the Council move forward and make a decision on the request before the body. He added that since JCU is willing to meet then the larger issue can be referred to the Planning Commission.

Vice Mayor Goldberg asked the Law Director about the temporary nature of the suggested motion. Mr. Fisher stated that under the code, Council must make a decision after hearing both sides of the issue within a reasonable period of time. In response to Councilman Consolo regarding the university presenting its plans to the Planning Commission under the provisions of Section 1258.05 of the Codified Ordinances, Mr. Fisher stated that if the appeal is upheld, John Carroll would present its building renovations plans to the Building Commissioner to go before the Planning Commission. He added that if the appeal is denied, John Carroll would have the right to initiate an administrative appeal in Cuyahoga County Commons Pleas Court within thirty (30) days pursuant to 2506.01 of the Ohio Revised Code.

Councilman Murphy stated that the Council also has the option to table the appeal for continued dialogue with the university. Mr. Fisher agreed that the appeal could be continued until the next regular meeting scheduled for Tuesday, September 7, 2010, which is still a reasonable time frame. However, it could not continue after that date.

Councilman Bullock stated that he was not aware the Mayor was having successful conversations with representatives of the university. Mr. Bullock preferred that the appeal be approved with conditions.

Councilwoman Pardee stated that she supports JCU and she wants to see the university grow. She wanted the help John Carroll as it helps the City maintain the integrity of the neighborhood. Mrs. Pardee was happy to take the first step of trust that a meeting will be scheduled in order the move forward.

MOTION BY MRS. PARDEE to deny the appeal and allow the transitional permit to go forward with the condition that all parking must be across the street in the Dolan Science Center parking lot. MOTION DIED FOR LACK OF A SECOND.

Mr. Bullock stated that he is prepared to support the previous conditions expressed by Mrs. Pardee. Councilwoman Pardee mentioned that the Law Director indicated the conditions were not appropriate.

Mrs. Pardee restated her previous conditions to require that John Carroll University provide to the City within three (3) months a list of its top four (4) priorities for development within the next 24 months outside of the University College District, but within University Heights, and to submit a list of the homes it owns with a 24-month plan for those properties. Mr. Fisher commented that he misunderstand and that the conditions were legitimate conditions for the transitional use special permit.

MOTION BY MRS. PARDEE, SECONDED BY MR. BULLOCK to uphold the Board of Zoning Appeals decision of June 16, 2010 to grant a transitional use special permit with the following additional conditions: that prior to the issuance of an occupancy permit John Carroll University shall provide to the City within three (3) months a list of its top four (4) priorities for development within the next 24 months outside of the University College District, but within University Heights, and to submit a list of the homes it owns with a 24-month plan for those properties.

Councilman Murphy stated that the Council is deviating from its history to tabling items before making important decisions. He added that this is the City's opportunity to have conversations with John Carroll University.

Councilman Ertel commented that a plan for the next two (2) years would not guarantee the City anything. Mrs. Pardee stated that the plan would answer some of the questions that the residents have regarding the property the university owns. She added that it would be a starting point for the boarder long term plan.

Vice Mayor Goldberg mentioned that the proposed motion seems to be taking things out of sequence because the transitional use permit will be passed on future provisions which may not be realistic. She noted that the intent is good, but it is more about the commitment.

Councilman Bullock asked Mayor Infeld how she feels about the conditions as they relate to her conversations with the university. Mayor Infeld responded that she has not talked to the university about the plans it has for the houses, but she will. She mentioned that the information will be helpful for the neighbors and the City as they move forward with the development of Fairmount Circle. With regard to the top four priority development plans, Mayor Infeld stated that it will allow open discussions and she could hold public meetings to help preserve the neighborhood. In response to a question from Mr. Bullock, Mayor Infeld stated that she has had a conversation with Father Niehoff since taking office.

Councilman Sims also felt that the motion is taking things out of sequence. He felt that the property could potentially be used in harmony with what is going on in the community, but there are too many unanswered questions. Mr. Sims mentioned that he is not mistrustful of John Carroll, he just want a firm agreement. He was also interested in how the City would proceed if the motion was to pass. He noted that right now the Mayor's attention has been on the development on Fairmount Circle. But, he wanted assurance that the Mayor would pursue issues related to the broader vision for the area by providing follow through on the specific items addressed in the motion and pursue the agreement related as to where development would be located. Mr. Sims stated that he would not press the suggestion for no further development on Carroll Blvd. because it may be premature.

Councilman Consolo agreed that the Council could not follow through on the motion once it is passed. He stated that they must place their trust in the Mayor with the objective that a comprehensive long term plan will be developed for the university and the City. Mr. Consolo requested that another condition be placed on the motion that no signage be on the second floor of the subject property. He also wanted the property taxes to remain status quo. Mr. Fisher explained that John Carroll has the right to file an exemption certificate.

Mr. Fisher asked if the university was prepared to sit down with the administration with regard to the master plan beyond what has been submitted. Mrs. Alfaro-Lopez replied yes.

Michael Kirincic, 4206 Carroll Blvd., asked why the appeal filed over a year ago was not considered in reasonable time. Mr. Fisher stated that the appeal was withdrawn and he felt it did not have merit. Mr. Kirincic felt that JCU went back door with the new application.

Mr. Farchione explained that JCU did not want to go to the Planning Commission at that time to talk about the broader issue. He asked why would they want to talk about it now. Mr. Farchione stated that now is the time for the City to take a hard stand with the university.

Mr. Udelson mentioned that she was told by a representative of the university that the homes would not be used for rental property when it purchased the first three (3) homes. Now, forty (40) homes later, the area has been changed into a rental community.

Councilman Consolo inquired if the issue would go before the Planning Commission under the provisions of Section 1258.05 of the code if passed at this meeting. Building Commissioner David Menn stated that it would go to Planning Commission and then back to the Council. Mr. Fisher stated that Section 1258.05 of the code applies to the U-5, University College District, but the property is in the U-2 district. Mr. Consolo stated that the provision applies all educational and institutional buildings and it would still be an educational or institutional building. Mr. Consolo suggested that the matter be tabled for further review if it is not going to the Planning Commission. Mr. Fisher stated that the property would remain zoned U-2 and a transitional use special permit would be granted for the ROTC proposed offices. He added that Section 1258.05 would not apply unless the university requested rezoning. However, he does believe a master plan should be submitted to the Planning Commission so that it can ultimately be voted on by the Council.

Mr. Consolo requested a report and recommendation from the administration, Mayor, Building Commissioner, and Law Director telling the Council what they recommend and why. Mr. Fisher stated that procedurally there is an appeal before the Council to the Board of Zoning Appeals' decision granting a transitional use. In terms of the Planning Commission, assuming that the transitional use is approved, John Carroll University would have to go to the Planning Commission with a specific plan as to how the subject property at 4070 Carroll Blvd. would be modified for use as offices. In regard to an overall master plan, that would be submitted to the Planning Commission for review and recommendation to Council and that is where Section 1258.05 of the code comes into play whether the property is in the U-5 district or not.

Mr. Udelson mentioned that the contentious relationship has been existing for 60 years. He suggested JCU use office space at Fairmount Circle temporarily until the university and City can get together and determine what is going to be done. He added that the residents are objecting because they have a right to protect their rights and their property value.

Councilman Consolo called for the vote.

Prior to the vote, Councilman Ertel stated that he wanted to have a decision at this meeting, but he was not sure about the conditions previously discussed. He stated that the City has to find out what is being planned for the homes in the neighborhood. He suggested that the permit be approved with the conditions that John Carroll University purchased no more homes in the areas between South Belvoir to Hadleigh and Fairmount to Carroll and the university would not receive the permit until there is a use plan agreed upon for the thirteen (13) homes currently in that area that John Carroll owns.

MOTION BY MRS. PARDEE, SECONDED BY MR. BULLOCK to deny the appeal and uphold the Board of Zoning Appeals decision of June 16, 2010 to grant a transitional use special permit with the conditions imposed by the Board of Zoning Appeals and with the following additional conditions: that prior to the issuance of an occupancy permit John Carroll University shall provide to the City within three (3) months a list of its top four (4) priorities for development within the next 24 months outside of the University College District, but within University Heights, and to submit a list of the homes it owns along with a 24-month plan for those properties, that there be no signage on the second story of the building, that property taxes would remain status quo, and that all parking must be across the street in the Dolan Science Center parking lot. On roll call, Mr. Bullock, Mr. Consolo and Mrs. Pardee voted "aye," and Mr. Ertel, Mr. Sims, Mr. Murphy and Ms. Goldberg, voted "nay." MOTION FAILED.

MOTION BY MR. MURPHY, SECONDED BY MR. SIMS to table consideration of the appeal until September 7, 2010 for further discussion. On roll call, all voted "aye," except Mrs. Pardee, who voted "nay."

Mayor Infeld suggested that Council be available for a work session prior to September 7, 2010.

B. Motion to amend Ordinance No. 2010-36 to substitute a revised Exhibit “A” to the ordinance

Chief of Police Gary Stehlik reported that Ordinance No. 2010-36 and its attachment, Exhibit “A”, an agreement establishing the Eastside Departments Group Enforcement (EDGE) Agency between the Cities of Beachwood, Euclid, Shaker Heights, South Euclid and University Heights,” have been amended since its first reading to include the City of Beachwood.

In response to a question by Councilman Consolo, Chief Stehlik noted that by instituting the EDGE agreement all five cities’ individual costs will be reduced. He added that there may be more activity, but it will be done with less people which will in turn reduce training costs and personnel costs.

Vice Mayor Goldberg asked how the forfeiture will work. Chief Stehlik replied that if they operate as part of the EDGE unit, the forfeiture would go to the EDGE unit. However, if University Heights works alone or with another unit, the City would receive the forfeiture.

MOTION BY MR. BULLOCK, SECONDED BY MR. CONSOLO to amend Ordinance No. 2010-36 to substitute a revised Exhibit “A” to the ordinance. On roll call, all voted “aye.”

C. Ordinance No. 2010-36 Authorizing an agreement with the cities of South Euclid, Shaker Heights, Euclid and Beachwood for the interchange of police personnel, equipment and services (2nd Reading)

Ordinance No. 2010-36, which was placed on first reading on June 7, 2010, authorizes an agreement with the Cities of South Euclid, Shaker Heights, Euclid and Beachwood for the purpose of affording police assistance and protection through the interchange of services of the respective police department and use of police personnel and equipment with the participating cities.

MOTION BY MR. BULLOCK, SECONDED BY MRS. PARDEE to approve the passage of Ordinance No. 2010-36. On roll call, all voted “aye.”

D. Ordinance No. 2010-42 Enacting and adopting supplements to the Codified Ordinances

Ordinance No. 2010-42 enacts and adopts the 2009 S-6 and the 2010 S-7 supplements to the Codified Ordinances of the City of University Heights.

MOTION BY MR. ERTEL, SECONDED BY MR. MURPHY to approve the passage of Ordinance No. 2010-42 as an emergency measure. On roll call, on suspension of rules, all voted “aye.” On roll call, on passage, all voted “aye.”

E. Ordinance No. 2010-43 Authorizing transfers

Ordinance No. 2010-43 authorizes the transfer of funds from the General Fund to the Police Pension Fund in the amount of \$63,938 and to the Fire Pension Fund in the amount of \$49,168.

MOTION BY MR. SIMS, SECONDED BY MR. ERTEL to approve the passage of Ordinance No. 2010-43 as an emergency measure. On roll call, on suspension of rules, all voted “aye.” On roll call, on passage, all voted “aye.”

F. Ordinance No. 2010-44 Amending Section 824.04 of the Codified Ordinances to reduce the advance notice requirement for garage and residential sales from five days to one business day

Ordinance No. 2010-44 amends Section 824.04 of the Codified Ordinances to reduce the advance notice requirement for garage and residential sales from five (5) days to one (1) business day.

MOTION BY MR. SIMS, SECONDED BY MR. ERTEL to approve the passage of Ordinance No. 2010-44 as an emergency measure. On roll call, on suspension of rules, all voted “aye,” except Mr. Consolo, who voted “nay.” On roll call, on passage, all voted “aye,” except Mr. Consolo, who voted “nay.”

G. Ordinance No. 2010-45 Amending Section 1474.11(c) of the Codified Ordinances exempting County Land Reutilization Corporations from violation assumption agreements and escrow requirements when purchasing property in the city

Ordinance No. 2010-45 amends Section 1474.11(c) of the Codified Ordinances exempting County Land Reutilization Corporations (Land Banks) under Chapter 1724 of the Ohio Revised Code from violation assumption agreements and escrow requirements when purchasing property in the city.

Building Commission David Menn stated that he thought the Land Bank would assume the violations, but not place funds into escrow. Mr. Fisher requested that the ordinance be tabled in order to allow him time to research the matter.

MOTION BY MR. CONSOLO, SECONDED BY MR. ERTEL to table Ordinance No. 2010-45. On roll call, all voted “aye.”

There being no further business to discuss, the meeting was adjourned.

Mayor Susan K. Infeld

Nancy E. English, Clerk of Council