

MINUTES OF SPECIAL COUNCIL MEETING  
CITY OF UNIVERSITY HEIGHTS  
MAY 9, 2011

Mayor Infeld called the special meeting to order at 7:35 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: Acting Law Director Dennis Nevar  
Clerk of Council Nancy E. English  
Finance Director Jennifer Esarey  
Interim Chief of Police James Williams  
Fire Chief John Pitchler  
Service Director Robert Jamieson  
Building Commissioner David Menn  
City Engineer Joseph R. Ciuni

Agenda Items:

**A. Planning Commission Recommendation: McDonald's Corporation final approval of proposed development plans for 2216 - 2234 Warrensville Center Road**

This item was tabled at a special City Council meeting held on July 26, 2010 in order for a traffic study to be conducted.

Present representing McDonald's were Bruce G. Rinker, Esq., and Anthony Coyne, Esq., counsel for McDonald's with Mansour, Gavin, Gerlack & Manos Co., L.P.A., Gust Mecera, regional construction manager, Mike Lewis, area real estate manager, Dave Gnatowski, P.E., area construction manager (project engineer), Paul Panzcy from Chicago, all with McDonald's, and James Ptacek, project manager with Larsen Architects.

Mr. Rinker reported that it has been a year since the Board of Zoning Appeals approved the special permit to operate a restaurant in a U-7 District at 2216-2234 Warrensville Center Road. He noted that since that time they have had a series of meetings reviewing the site plan, architecture, and other features of the site.

Mr. Rinker stated that the traffic study was completed, a work session was held to review the traffic study, and it has demonstrated that the proposed McDonald's restaurant will not be a negative impact on the community. He noted that they appreciated the fact that former Chief of Police Gary Stehlik reserved the right to consider traffic calming features. Mr. Rinker stated that they will defer to the experts in terms of traffic calming devices.

Mr. Rinker gave an overview of the PowerPoint presentation of the proposed project which focused on discussion points with the Architectural Review Board (ARB) and Planning Commission (PC). He displayed images of the existing site, landscaped green space along the western boundary adjacent to the residential area to the west, the trash enclosure location to the north end of the building with gates facing west, landscaping and fencing to define the front edge of the property for an urban and aesthetically pleasing setting. He indicated where site signage would be and noted that input on the signage was received from the Building Commissioner and Police Department. The sustainable design highlights will be reviewed later. Mr. Rinker showed the traffic pattern which moves in a counter-clockwise direction to allow for better ingress and egress and better traffic movements to, through and from the site. It took in pedestrian movement as well. He noted that directional lighting is proposed for the site with extra shielding in order to prevent glare or light pollution into the residential area to the west. The state-of-the-art speakers are proposed to be directed away from the residential area and toward Warrensville Center Road. He mentioned that the speakers modulate with the background noise so residents should not hear conversation from the speakers. He added that during the day the sound level will be approximately 50-60 decibels and at night the sound level will be approximately 35-36 decibels.

Mr. Rinker commented that the ARB focused on the aesthetics of the facade of the building materials as well as landscaping during its two meetings on the proposal. The next pages showed the site plan with improved green space and landscaping. The existing green space for the site is 2.3% and the proposed green space is 26.4%. Mr. Rinker noted that the increased green space is aesthetically pleasing and effective for storm water management. The proposed building will be one-sixth the size of the existing structure with sufficient parking to meet the Code requirements. As requested by the Planning Commission, the existing 5 ft. high masonry wall on the western boundary will be squared off and elevated to 6ft. in height and stained for uniform appearance. The 27 ft. area where the trash corral currently sits is proposed to be heavily landscaped with arborvitae, Norway Spruce trees and seven (7) Cleveland Select Pear trees along the wall. The double drive-thru area will also be well landscaped with native plants that offers color and greenery for durability. The drive-thru area landscaping will also screen the rear wall of the trash enclosure. The trash enclosure is incorporated into the north end of the building with gates in the rear facing west. Mr. Rinker stated that the ARB recommended matching the height of the trash enclosure and materials with the banding on the building. He added that the hours of operation were discussed as well as hours of deliveries.

Mr. Rinker pointed out that McDonald's offers international experience, but the operator of the proposed University Heights facility will be a local business person. The operator has not been selected to date. Other features which were reviewed which went through the ARB included the fencing, signage, color of signage and placement of the monument signs. It was noted that green features are also included such as the type of concrete used, use of trees, construction waste recycling, local materials to be used, energy and water conservation. The floor plan was displayed briefly and the elevations were reviewed from each direction.

Mr. Rinker stated that the City has recommended a traffic calming technique that provides a "single-lane slow point" on both Bushnell and Lansdale Roads to divide the commercial and residential zones west of the McDonald's restaurant. He added that two (2) options were presented, but the specific design is still to be determined by the City's experts. Under the traffic calming options Alternate 1, traffic from Warrensville Center Road would not be able to enter the residential area of either Bushnell or Lansdale Roads. Under Alternate 2, traffic from Warrensville Center Road would be allowed westbound on Bushnell Road. Mr. Rinker deferred to the City's traffic engineers with regard to traffic calming devices.

Councilwoman Pardee inquired as to the next step after Council's approval of the Planning Commission's recommendation. Building Commissioner David Menn replied that after approval, the final construction drawings will be submitted to the Building Department with a permit application. The Engineer will review the plans for final site approval and the Building Commissioner will review the plans with the Plans Examiner for building approval.

With regard to the Council's actions, Acting Law Director Dennis Nevar referred to comments of Law Director Kenneth J. Fisher in the last paragraph on page 2 of the City Council minutes of July 26, 2010, which read, "It was Mr. Fisher's opinion that the site plan had to be approved in some form based on the recommendation of the Planning Commission because the use has been approved. He added that Council could consider the height and size of the building, the setbacks, parking spaces, and traffic flow. Mr. Fisher advised that Council's discussions should be restricted to planning issues rather than zoning issues."

Councilwoman Pardee noted that the site was designed with more parking spaces than required and suggested that five (5) parking spaces be removed from the southwest corner of the site to provide landscaping similar to that proposed for the northeast corner of the site for the first residential property on Bushnell Road. Mr. Rinker noted that in regard to the square footage of the building, the Code requires forty-six (46) parking spaces and forty-eight (48) spaces have been provided. He mentioned that the number may change because the Code requires a ratio of the number of parking spaces to the number of seats. He added that they do not know what the total seat count would be. Mr. Rinker stated that they meet the Code requirement on all the factors mentioned by Mr. Fisher, i.e. height and size of the building, the setbacks, parking spaces, and traffic flow. Mr. Dave Gnatowski reiterated that forty-six (46) spaces are required, but the seating design is not completed so in fact it may be important to have those two additional spaces. He mentioned that the green space as proposed abuts most of the front yard and extends back to the front of the house next door. He added that the first parking space aligns with a dead area in relation to the house. Councilwoman Pardee noted that she was more concerned about parking under windows of the residential property and to provide a more balanced look.

With regard to the monument signs, Councilwoman Pardee stated that she prefers the gray background to the black because it is more aesthetically pleasing. Mayor Infeld mentioned the ARB was in favor of the design with the black background and yellow arches.

Vice Mayor Goldberg stated that at the July 1, 2010 Planning Commission meeting she requested that McDonald's explore a "Green McDonald's", which would generate national attention. One with sustainable building construction with solar panels. In this regard, Vice Mayor Goldberg stated that she would like to see more than just the 26.4% green space and a bike rack in terms of a "green" McDonald's. She commented on statistics compiled by the Green Restaurant Association with regard to the restaurant industry wasting energy, packaging, and leftover food. However, she remarked that many restaurants are taking steps to expand their eco-consciousness through composting, LED lighting, and recycled materials. She went on to comment about various McDonald's in Michigan where the interiors are designed with recycled and environmentally sensitive materials as well other McDonald's such as in California, Central America. She also commented that in 2009 Chipotle Restaurants initiated a solar push partnering with Standard Renewal Energy to install solar panels at approximately seventy-five (75) of its restaurants in Denver, Colorado, Austin, Dallas and San Antonio, Texas. She added that there are LEEDS certified buildings in Illinois, Long Island, New York and Minneapolis, Minnesota.

Vice Mayor Goldberg requested that McDonald's make a commitment to invest in a state-of-the-art eco-friendly restaurant to reduce operating costs and reduce the carbon footprint and to establish a carbon-neutral plan. She noted that if solar energy was utilized, McDonald's would decrease reliance on the grid and fossil fuels and replace it with clean renewable energy with a goal to build eco awareness and improve the environment one restaurant at a time. Vice Mayor Goldberg noted that this would be cutting edge and it would lead University Heights in the direction of sustainability. She added that it would send a message that improving the environment and being socially responsible does matter. Vice Mayor Goldberg remarked that an article in *USA Today* indicated that McDonald's is embarking on a \$1 billion facelift. She stated that this an opportunity to provide eco-friendly McDonald's across the country.

Vice Mayor Goldberg inquired as to how the proposed plan could be made into an innovative design using eco-friendly materials, biodegradable utensils, or solar panels. Mr. Anthony Coyne stated that issues in regard to solar technology is a big problem in Northeast Ohio due to the way the utility grid is setup. He added that the focus in Ohio is on using wind energy versus solar. He noted that as it relates to Fortune 500 companies, McDonald's ranks 79 or 80 in terms of its green practices and sustainability. Mr. Coyne introduced Mr. James Ptacek, who is LEEDS certified, to explain how McDonald's plans to incorporate green technology.

Mr. Ptacek stated that McDonald's has made a fundamental shift in how it approaches things because as a business anything that they do that saves operational costs is a net benefit and most of the changes that it has employed to make operational efficiencies or better durability or better interior environments have not only a sustainable aspect to them, but are good for business as well. He noted that it has a triple bottom line people, profit, planet. In all three of those things, McDonald's has embraced not only to be a good steward of resources, but it is better for the employees, better for the community, and better the people that live there.

Sustainable site highlights include: 26.4% permeable surface for water quality; construction erosion control plan; high albedo concrete to reduce heat island effect; trees a perimeter to reduce heat island effect; construction waste recycling; regionally sourced/native landscape plants.

Energy and water conservation highlights include: white roof reduces heat island effect and cooling; ultra low flow urinal (.25gpf) -75% use reduction; ultra low flow toilet (1.0gpf) -37.5% use reduction; auto sensor lavatory faucets -75% use reduction; high efficiency roof top and water heating equipment; high efficiency cooking hoods 50-60% more efficient; roof fans more efficient by 20% less energy use; high efficiency LED interior lighting 50% more efficient; LED egress lighting - 90% more efficient; LED building lighting - 90% more efficient; all signage LED lighting.

Materials and resources highlights include: locally sourced building and materials where possible; recycled content; green guard certified materials used in decor; and non-ozone depleting refrigerants. Mr. Ptacek mentioned that they do not have a final design package as that is a choice of the owner.

Mr. Ptacek stated that McDonald's is making strides in sustainability and ranked 79 in *Newsweek's* top companies within the United States. He added that Whole Foods ranked 93.

Vice Mayor Goldberg inquired if solar panels could be included on the building. Mr. Ptacek replied that it would be difficult in Ohio.

Councilman Bullock commented that the project has come a long way from the first presentation and he appreciated the effort made to present a quality project. He asked who will share the commitment to maintain the property. Mr. Rinker stated McDonald's goes through a significant vetting process in selecting an operator. Mr. Gus Mecera explained that McDonald's has a strong commitment because it is about keeping its image and quality in the forefront. Therefore, every licensee is graded in the same manner. He noted that they go through a review process on an 18-month cycle with four (4) visits. There is a review that includes everything from operations to how the lot is maintained. In response to an additional question by Councilman Bullock, Mr. Mecera noted that the definition of local operator could come from anywhere in the Cleveland area.

Councilman Sims inquired as to whom concerns should be directed to in terms of operations or should the property not be maintained to high standards. He also asked whom would respond to the concerns. Mr. Mecera replied the every restaurant is tied into an 800 customer service number which is answered by the licensee first and is tracked by the regional office. However, he added that every comment or concern is taken seriously so any comment or concern could be lodged at the front counter, the 800 number or the regional office. Councilman Sims asked what the repercussions are if the operator does not get a good grade. Mr. Mecera responded that the operator could ultimately lose the business.

Councilman Sims stated that many of his concerns relate to how lighting and noise may affect the neighbors. He requested that the proposal for lighting and the speakers be reviewed again. Also time of deliveries and how deliveries would be done as to not disturb the neighbors. Mr. Gnatowski responded in regard to the speakers and lighting as presented on page 2. He noted that deliveries will be scheduled by the licensee and can be coordinated so as to minimize impact to the neighboring residents. He added that frequency of deliveries depends on volume, but is anticipated at 2-3 times a week. Councilman Sims also asked how much noise the roof top fans would generate. Mr. Ptacek replied that since sound rises, it would be mitigated because it would rise above the 18 ft. height of the building past the windows of the homes where it would be perceived. He also noted that in regard to deliveries, McDonald's has developed a drop method whereby all the items from the warehouse is placed on a cart, it is unloaded, then wheeled into the cooler and freezer, which makes for a faster delivery and less time on the site. He noted that the delivery truck would be on the site for a short period of time, which allows more flexibility for scheduling.

Councilman Sims stated that it is important to him that the traffic calming measures would be of an aesthetic nature and of a quality and of a design that would enhance the view from the street and would complement the design of the building. He understood that McDonald's was leaving the design of the traffic calming measures to the City's experts, but suggested that it be a part of the site plan development. Councilman Sims inquired as to whom will bear the cost of the traffic calming devices. Mr. Rinker stated that detailed drawings will be submitted for review by the Engineering and Building Departments. He noted that McDonald's supports traffic calming and would like to incorporate it into the site plans drawings. Mr. Rinker stated that McDonald's will contribute \$20,000 toward the traffic calming measures. He mentioned that site plan review will be very detailed and McDonald's is looking to the City (Police Chief, Fire Chief and Engineer) to give guidance on the design.

Councilman Consolo inquired if the contingencies within the Planning Commission's recommendation have been taken care of. Mr. Rinker responded that all items have been addressed: the wall was squared off, more trees were added, the buffer at the southwest corner of the property was reviewed, and hours of operations was changed to close at 10:00 p.m. which took the residents into consideration. Councilman Consolo asked what kind of impact it would have if the Council added a condition that deliveries are to be made during the hours of operation. Mr. Rinker replied that would be agreeable.

With regard to traffic calming versus traffic eliminating, Councilman Murphy noted that the major concern was not being able to turn an emergency vehicle around. He asked if that is a state requirement, local requirement or a preference because he was curious if the emergency vehicle could back out of the street. Chief Pitchler stated that it cannot be done by National Fire Protection Association (NFPA) standards and the Ohio Fire Code.

Councilman Ertel stated that he is not in favor of the project. It was his opinion that the project does not work because it seems to be a corporate entity trying to shoehorn itself into a community. He thought lighting, noise and traffic would be a problem. Councilman Ertel would like to see a community business that is an enhancement to the community occupy the site.

Councilman Ertel raised a point of order citing Codified Ordinances Section 1244.10, which reads, "Special permits and adjustments approved by the Board of Zoning Appeals shall be void after six months from the date of such approval unless, in the case of new construction, work shall have been done above the foundation walls, and in cases of occupancy of land or reconstruction or occupancy of buildings, the operation called for by such approval shall be well under way by the end of such six month period." Mayor Infeld stated that the section does not apply because the project was known to be under consideration. Acting Law Director Dennis Nevar agreed and noted that the project has been before the City Council, it was tabled on July 26, 2010 at the Council's request to perform a traffic study, which was performed and paid for by McDonald's. Mr. Nevar stated that it would be improper to raise a point of order to start this process over after Council tabled the matter for almost a year while the applicant was performing the traffic study that the Council requested. Mr. Ertel inquired as to why the traffic study took so long when it was suppose to take a couple of months. Mayor Infeld stated that the scope of the traffic study was determined in large part by many conditions set by the Council. The City Engineer had to review the scope for practicality and also had to have time to advertise the proposed traffic study to firms capable to perform the work. Mayor Infeld went on to say that McDonald's could not have started construction because they did not have approval. She explained that after the traffic study was completed, Council requested a work session which did occur.

Mr. Rinker requested that Codified Ordinances Section 1244.09 be considered in conjunction with Section 1244.10. Section 1244.09 reads, "Any permit issued by the Building Commissioner pursuant to any decision or determination of the Board or Council shall have incorporated therein all special conditions of such permit prescribed by the last body to act on the matter." Mr. Rinker mentioned that with regard to the permit the section references the Building Commissioner, who gives them permission to move forward with the next step. He added that in accordance with Robert's Rules of Order tabling suspends the time until such point as the Council acts and gives direction to the Building Commissioner.

Councilman Consolo inquired if a permit has been issued. Mr. Nevar replied that a permit has not been issued to start construction.

Councilman Sims thanked McDonald's for its interest in the University Heights. He commented that McDonald's has been very responsive to the questions and concerns that have been raised at every level. He noted that the proposal has been under consideration for almost a year and the people that has approached him regarding the project has been a 50/50 split for and against. Councilman Sims stated that his approach to such project is to be as sensitive as possible to the issues and concerns of the people who would be most affected.

In addressing the support and opposition, Mr. Sims noted that the support appeared in several different areas: the primary concern should be the economic health of University Heights; that the existing area is presently an eyesore and that McDonald's would be a major improvement; that the project would contribute to a sense of economic momentum in the city; that the development would have no ill effects on traffic or real estate; the city has already run an excellent carwash business away and what kind of message would it send to reject McDonald's; and people owning property next to a commercial property understand the risks before they purchase the home.

Councilman Sims agreed that a primary concern should be the economic health of the City. But, he also believes that a project of the scale of McDonald's and the estimated new tax revenue that it would generate will not make or break the City. He really believes that the potential of the project is as much to have harmful impact on the City's economic health as it is to benefit the City. Councilman Sims said he believes the development would have an adverse effect on the surrounding real estate values. While it is estimated that the project will directly benefit the City to the tune of about \$20,000 a year in new taxes, that benefit could easily be offset. What was also key to him was that the site provides the curbside impression of the City. This is the reason he is concerned about the character and design of an diverters or traffic calming features. Mr. Sims commented that prospective new homeowners may not want to purchase a home neither east or west of a McDonald's.

He noted that other than improving the physical appearance of the site and creating a possible temporary sense of economic momentum and excitement for him the project is just another McDonald's, which may not be a true community asset. He believes after the newness and novelty of the development wears off that it will become clear that there is little impressive about the addition of a McDonald's and chances are the addition could soon become a subtraction especially to the appeal of University Heights as a special place to live.

With regard to the process and decision, Councilman Sims noted that he is personally not happy with the process that has led the Council to this point and he does not believe McDonald's is the best and highest use for the site primarily because the economic benefit the City would derive would be nominal, approximately \$20,000 per year. He also believed that since the property required a zoning variance, the Board of Zoning Appeals should have denied the request. However, Mr. Sims questioned how the BZA would have known to deny the project when the City does not have a comprehensive development or master plan for the City. He does not believe how the approval process would unfold and what was at stake at each stage of the approval process was well explained. He mentioned that the residents were told that four (4) levels of approval were required with Council having the final say without adequate explanation of the fact that different concerns should be expressed at the various bodies and that appeals should be appropriately lodged at each of those respective stages during the consideration. Councilman Sims stated that City Council does have the final approval on the project, but only on site plan, not zoning use. He noted that zoning use was decided by BZA and because of how it was communicated to the public, that approval was not appealed because the public believed it could be revisited at another stage of the approval process. With that being the case, Mr. Sims stated that his focus has been to ensure that the project meets the highest standards of development under the City's ordinances. He noted that unfortunately, the City cannot pick and chose or dictate what businesses locate in an area that is appropriately zoned for the use and now this parcel is zoned for that use. In his opinion and based on communication from the Law Director, without running the risk of protracted and costly lawsuits, the best the City can do is to ensure that the development address the appropriate safety and traffic consideration that meet the highest standards of design, construction, and aesthetics.

Councilman Sims stated that when he heard about the proposed project on May 25, 2010, he sent an email to the members of the Board of Zoning Appeals, the Architectural Review Board and the Planning Commission noting his concerns and urging full consideration of the impact of the proposed development on the community beyond basic compliance issues and within each of their respective powers and authorities to act to ensure that the development will maintain a high design character for community development that will strengthen, enhance and improve the existing visual and aesthetic character of the city and that the development is compatible and harmonious with the existing overall character of the city. To a large extent he thinks that has been achieved. He further requested that each of the various bodies pay particular attention to the situation, configuration, layout of the building and overall building design, exterior finish, signage, and fencing as well as landscaping and parking. He additionally wrote to the Sun Press to indicate that he shared a concern that it reported and that the Council liaison to the BZA expressed about how the area would be situated, designed, and camouflage where the trash would be placed, the impact of the character of the design on the surrounding residential real estate values, the peace and enjoyment of the adjacent property owners, traffic flow and pedestrian safety as well as landscaping, fencing, lighting, parking, signage and that all should be considered and would determine his support or opposition. He noted that all three (3) bodies i.e. the Board of Zoning Appeals, Architectural Review Board and the Planning Commission approved the development with modifications. But still, the only reason City Council has any role or involvement in the decision at this meeting is because the Planning Commission's recommendation on the site plan is subject to City Council approve.

Councilman Sims stated that he still had major concerns about the impact the project will have on adjacent property values and the peace and enjoyment of the adjacent property owners given potential traffic, noise and lighting concerns from sunrise to midnight. He was not impressed with the 12 to 15 full-time jobs with an average pay of \$15.00 per hour based on the estimated payroll figure for non-management staff provided to the City. He would like to see real economic development occur with a focus on securing 20 to 40 higher paying jobs with the potential to generate a couple million dollars in payroll. Councilman Sims commented that he does not believe the Council should be addressing site plan, but rather should be addressing a project that would represent the best and highest use of the limited development opportunities that remain in University Heights.

Councilwoman Pardee offered remarks that her reaction to McDonald's coming into the Warrensville Center Road site was why not a locally owned unique restaurant such as Anatolia, Lemon Grass or Melt, but that choice was not the City's. It is the choice of the property owner. She noted that the Council is bound by zoning codes, ordinances, and the charter. Councilwoman Pardee mentioned that she attended the BZA, ARB and PC meetings where the proposed project was reviewed. She found the Board members to be vigilant, detailed and thoughtful as they reviewed the project. She added that the members walked the site, asked probing, in-depth questions and made good revision requests of McDonald's, who complied with those requests.

Councilwoman Pardee stated that the project has improved from the initial proposal. However, there has been a great deal of emotion, passion and fear, especially on the part of the neighbors affected by the proposed project. She understood that their homes abut a busy retail and commercial area that includes University Square, Cedar Center, Boston Market and the retail strip that houses Bialy's and Rascal House. She added that the City wants to retain the small town favor of University Heights. Councilwoman Pardee echoed the call of some to attract locally owned coffee shops or restaurants the city. But, she mentioned that the city ready has the reality of national chain restaurants and retail lining the major intersection of Cedar and Warrensville Center Roads.

Councilwoman Pardee stated that it is in McDonald's best interest as a business to be a good neighbor and keep clean, well managed restaurant with good ambience, parking and efficient travel and drive-thru patterns. She added that the new generation McDonald's is more attractive than the old McDonald's. The ARB's work on the site design has resulted in the addition of ornamental fencing and subdued signage. Mrs. Pardee noted that the BZA, ARB and PC contributed to a significant increase in green space on the site by urging more plants, bushes and trees as well as a higher wall at the back of the site.

Councilwoman Pardee mentioned that there is many in the community who want a McDonald's or another business to come in to restore the blighted block. She noted that the City cannot afford to reject good projects that will bring income into the City, and the City will gain both personal and business income tax. She mentioned that the McDonald's Corporation has a reputation of being a good corporate neighbor. Their franchisees give back to the community, employ teens, and provide an inexpensive gathering spot for senior citizens. She added that increase activity on the corner would likely draw additional consumers to the retail stores in the area and possibly other businesses to the empty storefronts at University Square. Councilwoman Pardee stated that she did not make this decision lightly, but what she did do was visit numerous McDonald's sites to examine the various interiors, exteriors and locations. She also timed the cars at the drive-thru on Mayfield Road near Green Road and parked near that drive-thru to see how loud the voices were on the load speakers. She was satisfied with speed of the cars moving through the drive-thru and the muted sound from the speakers when ordering. She is also satisfied with the traffic studies both old and new as well as the project design, lighting plan and sound levels.

Councilwoman Pardee supported the recommendation of the Planning Commission to accept the plan. She understood that this would be the Council's final opportunity to make suggestions and she did so at this meeting. Mrs. Pardee was also in favor of former Chief Stehlik's preferred traffic calming suggestion using the islands to block one lane on Bushnell and Lansdale Roads whereby traffic on each street can proceed out to Warrensville Center Road, but traffic coming in from Warrensville Center Road can only access McDonald's driveways and then must exit back onto Warrensville Center Road. However, if there is not strong feeling from the neighborhood, she was more in favor waiting to see if traffic calming is even needed. Councilwoman Pardee noted that McDonald's has offered to provide 1% or \$20,000 of the estimated project cost for traffic barriers. As a show of good faith, Mrs. Pardee requested that McDonald's consider placing an additional 1% or \$20,000 in escrow with the City to support any other necessary changes that might be needed to protect the quality of life in the neighborhoods that might be affected by the development. She noted that the funds are not completely used within a 3-year period the remaining funds could be returned.

Councilwoman Pardee supported the McDonald's project and welcomed the new business. However, she was hopeful that the Mayor's Blue Ribbon Economic Development Committee will begin the discussion about the types of businesses that the City wants to attract and development plans to do that. She also looks forward to the City updating the zoning code, to review the layout of the City, consider current zoning, and identify our citizens' interests. Mrs. Pardee stated that in this way the City will better the odds that it will attract what it wants to the city rather than reacting to projects after the fact. She added that the City must create a welcoming environment for those businesses it wants to attract so that University Heights' future is being guided rather than letting other forces drag it along.

Councilman Bullock stated that the Council has been presented with a recommendation from the Planning Commission on a proposal that was presented by the owner of the property and the developer. He noted that when he heard the owner of the property brought forth a developer to build a McDonald's he questioned why a restaurant or why a gas station and car wash. Mr. Bullock urged the Mayor to move forward with the Blue Ribbon Economic Development Commission because he believes the City can get ahead of these kind of situations if it is more proactive in its efforts.

Councilman Bullock stated that he intends to vote for approval of the proposal. He will do so because there will be improvements on the site in terms of attractiveness and safety. Mr. Bullock added that he would have preferred to have had a different project than a McDonald's something that would generate more revenue for the City and be more pleasing to more people who live in the city. But, the Council's purpose at this meeting was to approve or disapprove the recommendation from the Planning Commission and he has not seen or heard any basis for not approving the recommendation. Therefore, he will be voting in favor of the proposal.

Vice Mayor Goldberg stated that she is not enamored by a McDonald's restaurant with a double drive-thru in University Heights. She would have preferred that the site be used for another commercial venture such as medical offices or retail. Vice Mayor Goldberg noted that the property in question is an eyesore with its blighted, vacant storefronts. She questioned the City's options and contemplated if the City could do better or worst than the proposed McDonald's project.

Vice Mayor Goldberg stated that on July 1, 2010, as a member of the Planning Commission, she voted against the site plan for McDonald's because she felt it was imperative to obtain an updated traffic impact study in order to provide the residents with up to date impact data for the site and traffic in the area. She noted that the Council voted to retain URS Corporation to perform the traffic study. The results of the traffic study showed a decrease in traffic volume along Warrensville Center Road and with the current design there would be no adverse impact on traffic. Vice Mayor Goldberg stated that her concerns have always been traffic and safety and the best use for the property and the residents. She mentioned that the project would create job such as short term construction jobs and fifty (50) employees. She was surprised that the estimated annual municipal income tax would only be \$14,250 and annual property tax income estimated at \$7,998.19. She added that with net profits of McDonald's there would be additional income generated at the property in question.

Vice Mayor Goldberg pointed out that the City cannot force a company to occupy or open a business at a particular location if it does not own the property. Neither can the City deny a legitimate proposal. She noted that McDonald's has demonstrated a desire to locate and operate in University Heights. They received a special permit from the Board of Zoning Appeals on May 12, 2010 to operate a restaurant in a U-7 District. McDonald's also appeared before the Architectural Review Board on May 13, 2010 and June 13, 2010. The ARB also requested to see any final revisions which may have been recommended by Planning Commission or City Council prior to final approval. Vice Mayor Goldberg stated that it appears that McDonald's wants to work with the City and its resident to make the project successful for everyone. Vice Mayor Goldberg was philosophically opposed to the McDonald's project as she would have preferred a different use for the land. Ms. Goldberg noted that she has always tried to represent the wishes of University Heights' residents with the objective of protecting and maintaining the charm and small town feel, ensuring the safety of the residents, but most importantly, maintaining the heart and soul of the community. Therefore, Vice Mayor Goldberg stated that she would be voting with many of her constituents, who have communicated to her that they want McDonald's in the city.

Vice Mayor Goldberg stated that to deny the site plan without specific cause would subject the City to potential legal exposure which she was not willing to do. She commented that economic development and a long term zoning plan must be initiated to prevent the kind of reactive decision making that has gripped the City. She was hopeful that McDonald's would be a good corporate citizen by providing future scholarships to local students and sponsorship of community events as well as making a commitment to create a green new generation McDonald's in University Heights.

Councilman Murphy stated that there is a process in the City for new development and the process was followed. He noted that McDonald's was granted a variance for the project. As a result, the question the Council is being asked to consider is whether a McDonald's restaurant is the highest and best use for the property by approving the site plan. He added that McDonald's for almost a year has made every effort to work with the City in order to ensure that the site plan minimizes the impact of the business on the residents.

Mr. Murphy stated that given the limited scope of the decision the Council has to make and with the realization that they need to mitigate legal risk to the City, he did not know if the Council had any other choice but to approve the project.

Councilman Ertel stated that it is a frustrating system the City have gotten into where it can approve or not approve a project and was not sure what could be done about it. He mentioned that the City chased away a carwash and asked what would it say to future businesses if McDonald's was chased out as well. Mr. Ertel noted that the City did not seek out the car wash business or McDonald's; they came to the City. He stated that if the City had an Economic Development Commission, they would not be considering a car wash or a McDonald's and felt it was a shame that the city is so close to having one. He added that big business is not good for business or neighborhoods.

Mayor Infeld advised the audience of the process that was followed. She mentioned that McDonald's made an application to operate a restaurant in a U-7, Local Retail District. The Building Commissioner denied the use because it was against the City's Zoning Code. However, the U-7 District is a commercial district and although it does not allow the operation of a restaurant, the existing restaurants near the proposed McDonald's site have special permits to operate those restaurants. She noted it is for that reason that McDonald's came to the Board of Zoning Appeals. She added that there were two (2) other restaurants previously located at the proposed site – one being Empire Kosher Chicken.

Mayor Infeld stated that she directed a letter, dated April 27, 2010, to residents, business owners, and the Council in advance of McDonald's initial appearance before the Board of Zoning Appeals. Included in the letter was a highlighted coupon with the schedule of meetings leading up to the potential approval of the project. The meetings were identified as the Board of Zoning Appeals meeting, Architectural Review Board meeting, Planning Commission meeting and eventually a City Council meeting. The only meeting not included in the letter was the second ARB meeting.

Mayor Infeld also mentioned that a notice of the BZA's decision to grant the special permit to McDonald's was sent to neighbors and business owners in proximately to the site. She added that the notification included instructions regarding the option to file an appeal of the decision to the City Council. Even though people were notified of their options, an appeal was not made.

Mayor Infeld stated that she did her due diligence by contacting local area business owners to obtain their opinion about a competing business. She noted that the businesses felt bringing new business in would increase their business. She also talked with the Heights-Hillcrest Chamber of Commerce which gave her the same response. Mayor Infeld mentioned that she has heard overwhelmingly from people in the community that they are in favor of the project.

Maleeda Wagner, 3887 Bushnell Road, commented that she believes the notice of the Board of Zoning Appeals decision as required under Section 1244.08 of the Codified Ordinances was not complied with because the notice was not published. She noted that legal publication according to Codified Ordinance Section 220.17 is notice to the newspaper and physical locations in the community. She commented that the BZA did not put the notice in the newspaper or post it in a public location or post it online. Rather the decision was put into private letters to private residents. She questioned how a person can appeal within 10 days if they cannot find the notice. Mrs. Wagner stated that she and her husband would have appealed the decision if they had known. Mayor Infeld stated that she was aware that the secretary to the Board of Zoning Appeals did in fact publish the required notice. She added that the notice went out to the community within 24 hours after the decision was made as is the norm.

Frederick Prizant, 3869 Bushnell Road, expressed his opinion that there was a planned blight of the property in question by the property owner in order to sale the property. Mr. Prizant stated that he could not attend the meeting regarding the traffic study due to Passover, but did review it. The conclusion was that there will be no real increase in traffic to the area. Mr. Prizant did not agree with the comment about no increased traffic onto Lansdale and Bushnell being used as a cut-through because it is only three seconds shorter. He mentioned that they did not take into account the traffic lights and other traffic problems on Cedar and Warrensville Center Road. He added that the study also ignored the traffic to the restaurant generated west of the area which would not access Cedar and Warrensville Center Road. Therefore, there would be increased traffic on Bushnell and Lansdale Roads. In regard to traffic calming measures, Mr. Prizant did not like the suggestion of using a barrier to make Bushnell and Lansdale one lane. He felt that people would abide by signage indicating left turn only onto Bushnell Road and a right turn only onto Lansdale Road. Mayor Infeld noted that Council would be considering the directional traffic issue at this meeting.

Dan Green, Bushnell Road resident, commented that on page 25 of the traffic study under 5.0 traffic calming, the third paragraph indicates that since there were no traffic counts performed at intersections within the neighborhoods or along Cedar Road they were unable to do a detailed analysis of the impact of McDonald's traffic or any traffic calming devices that may be implemented. Mayor Infeld stated that the person who wrote the study explained what he meant at the meeting held to discuss the traffic study.

Mr. Green mentioned that McDonald's intends to hire 64,000 people because there is a trend for McDonald's to operate 24 hours per day. He requested that a provision be included in the agreement with McDonald's that the company would adhere to the original hours for the next 15 years. He also requested a provision in the agreement that McDonald's would pay the salary for any necessary manned traffic control requirements.

Jeri Shore, 4026 Bushnell Road, stated that the residents on Bushnell Road east of Warrensville Center Road to Miramar Blvd. will be impacted by the proposed McDonald's, but those residents were not included in the traffic study, letters that were sent out to the community or the decision making. She noted that if they had known about the meetings perhaps some of those residents would have attended to the meeting. Mayor Infeld stated that the notification requirements are to notify property owners within 100 ft. of the proposed site, but in this case the notification area was greatly exceeded.

Paul Miller, 2370 Charney Road, stated that it seems like the decision to approve the McDonald's has already been made. He noted that the project should have been stopped a year ago and asked where everyone was at that time. Mr. Miller mentioned that a large number of students from Wiley Middle School stopping at McDonald's could become a potential problem. He did not understand how University Heights, the City of Beautiful Homes, could approve a McDonald's. Mr. Miller could not believe that the City does not have a Master Plan and that it waits for developers to approach the City about doing business in University Heights rather than the City taking a proactive stance. He added that the elected representatives should listen to the people who elected them and guide the city as to what is right for the city, not what is fair.

Geraldine Brown, 3965 Lansdale Road, stated that she has been at every meeting regarding McDonald's and made comments at every meeting. Mrs. Brown felt that her comments have not been heard. She noted that it seems like the project is a done deal. Mrs. Brown mentioned that Lansdale Road is currently used as a cut-thru for the businesses in Cedar Center, but Lansdale Road was not considered in the traffic study. She asked that Bushnell Road and Lansdale Roads be made into cul-de-sacs if the project is approved.

Thomas Rucks, 3927 Washington Blvd., expressed concern that he saw fear on the part of the Council to make a decision. He asked what the City has done to fear being sued. Mr. Rucks noted that the residents are looking to the Council to make the right decision for the people because the city is its people.

Annie Rawlinson, 3949 Bushnell Road, noted that she has been trimming the bushes on the site for the last 10 years, but she will not have to do that anymore. Mrs. Rawlinson stated that she can see both sides of the issue. She mentioned that the Council seems to be in a turmoil about the property. However, she added that \$20,000 does not seem like much to be generated from McDonald's to pay the City. Mrs. Rawlinson expressed concern about her property value and a potential increase in traffic. She requested that if the project is approved that signs be posted for no left-hand turns on Lansdale Road and no right-hand turns onto Bushnell Road. She also suggested there be flexibility so McDonald's can make changes on the street for safe ingress and egress.

Carrie Hutchins, 3963 Lansdale Road, stated that her quality of life will be impacted by traffic, noise, food smells and trash if the McDonald's project is approved. Mrs. Hutchins also noted that roadway surface of Lansdale Road is in terrible condition and needs to be repaired. Mayor Infeld stated that the City has applied for funding to repair the street, but they have not heard if the funds were awarded. Mrs. Hutchins stated that if she knew a McDonald's was going to be on the site, she would not have purchased her home.

Beverly Potter, 3916 Lansdale Road, mentioned that she too has had the feeling that the residents are being pacified and she felt betrayed during the approval process. Mrs. Potter noted that kids love McDonald's and traffic help will be needed as well as police assistance if fights break out. But, she stated that if a McDonald's is to be located in the city, she is believing that all things will work together for the good.

Mayor Infeld assured the public that she and the Council are concerned about the traffic and safety within the residential area.

**MOTION BY MR. BULLOCK, SECONDED BY MRS. PARDEE to accept the Planning Commission recommendation for final approval of the proposed development plans for a McDonald's restaurant at 2216-2234 Warrensville Center Road as presented with conditions as defined by the Planning Commission and subject to the following additional conditions: 1) deliveries to be made during the hours of operation from 6:00 a.m. to 10:00 p.m.; 2) exit signage prohibiting right-hand turns onto Bushnell Road and left-hand turns onto Lansdale Road; 3) consider the option to provide traffic calming devices, if needed, within one (1) year of the opening of the restaurant in accordance with the recommendation of the Police Department and the City Engineer's Office with such traffic calming devices to be paid for by McDonald's. On roll call, all voted "aye," except Mr. Ertel and Mr. Sims, who voted "nay."**

Mr. Rinker stated that McDonald's agrees to post the traffic signage as requested and to come back and work with the City on traffic calming devices or traffic calming islands, if needed.

Mr. Ertel left the meeting at 10:00 p.m. due to illness.

Agenda items C, D, and E were considered out of order, but for the purpose of these minutes they are denoted in proper order.

**B. Ordinance No. 2011-10 Authorizing the City to enter into an Amendment Agreement with the Cleveland-Cuyahoga County Port Authority and the Cleveland Heights-University Heights City School District, relating to a Cooperative Agreement, a Tax Increment Financing Agreement and a Memorandum of Understanding related to the University Square parking garage (2<sup>nd</sup> Reading)**

Ordinance No. 2011-10, which was placed on first reading on February 22, 2011, authorizes the City to enter into an Amendment Agreement with the Cleveland-Cuyahoga County Port Authority and the Cleveland Heights-University Heights City School District, relating to a Cooperative Agreement, a Tax Increment Financing Agreement and a Memorandum of Understanding related to the University Square parking garage.

Councilwoman Pardee recused herself from the discussion and the vote on Ordinance No. 2011-10 because of conflict of interest as she is an employee of the Cleveland Heights-University Heights City School District.

Ms. Virginia "GiGi" Benjamin, the City's bond counsel from Calfee, Halter & Griswold, reported that the City has the latest draft of the Amendment Agreement, dated February 14, 2011. The agreement has been approved by the Cleveland Heights-University Heights Board of Education and the Board of Directors of the Cleveland-Cuyahoga County Port Authority. She has been advised that the current owner of the University Square property, Inland Western et al., which is subject to special assessments, and the Bank of New York Mellon, the bond trustee, will acknowledge the agreement. She noted that the City has also been provided with a letter (dated April 28, 2011) from the Port Authority's administrative agent, Argus Growth Consultants, Ltd., as well as a letter (dated April 28, 2011) from Ms. Benjamin regarding interpretation of the existing contract so that the City may recoup some of the taxes that have been effectively refunded to the Target and Macy's property owners with respect to their reductions in property values.

As background information, Ms. Benjamin noted that in 2008 the City failed to turn over payments received by the City as service payments in lieu of taxes with respect to the various parcels at University Square. By contract, the City was required to turn those funds over. When they became aware of it last year, they worked with the Port Authority, the School District, the bond trustee, and Inland to come up with an agreement that essentially says, "here is where we are, we will pay over the monies that we owe, on a going forward basis we will make up the rollback payments that were not made and to pay over to the School District amounts owed to the School District pursuant to the agreement that had not previously been paid relating to increased tax levies since the date of the agreement." The School District has agreed if there is a surplus remaining at the end of 2011, after debt service is paid on the Port Authority bonds, rather than the School District receiving that money, which it is contractually entitled to do so it will leave any balance for the City to use to partially repay the amount of the refunds that the City has been required to pay.

Ms. Benjamin mentioned that the bond trustee and the legal counsel to the Port Authority has been inquiring as to the status of Council's approval of the Amendment Agreement. She noted that failure to pay the money over would constitute an event of default under the existing loan documentation Cooperative Agreement. The bond trustee has not sent the notice of default pending the approval of the Amendment Agreement. But, she has been advised that they are anxious to have Council approve it.

Mayor Infeld stated that this is a very serious financial situation that will impact the Port Authority if the agreement is not approved by the Council and in turn serious impact on the City's ability to raise funds. She noted that the City is the only party to the agreement that has not approved the Amendment Agreement. She mentioned that she too has been receiving inquiries as to why the Amendment Agreement has not been approved. Mayor Infeld stated that every other agency involved has signed off on the agreement and the calls she has received suggest that there is no more time left to consider this matter.

Councilman Bullock stated that he hoped the Mayor and/or Ms. Benjamin gave the interested parties a response because the Council raised questions that took a long time to get the answers from the bond counsel. He questioned if the Council was suppose to make the decision before they received the answers. Mr. Bullock noted that they still do not have all the answers, but he is ready to move on the Amendment Agreement. Ms. Benjamin apologized if it sounded like the Council should act before she got the information. She noted that it did take a long time to get the information to the Council. Ms. Benjamin stated that she informed the parties that they were trying to establish the amount of overpayment that the property owners had made and the amount that the City was required to refund through the reduction in taxes received.

Councilman Consolo stated that to his understanding there is about \$650,000 that the City has paid back to property owners, but under the Amendment Agreement it can only recoup \$300,000 unless certain scenarios happen, which were addressed in Ms. Benjamin's letter. Ms. Benjamin explained that the \$300,000 is an estimate based on cash flow analysis by the administrator of what the administrator thinks will be the total amount received, the total amount paid out for debt service, the total amount paid out to the School District, and what will remain. Therefore, she cannot guarantee if that number is \$300,000 or \$291,000, which she thinks it is or something else.

Secondly, Ms. Benjamin stated that Mr. Consolo was correct, whatever that balance is, is all the City is guaranteed to get in cash. She noted that the way the contract is written the amount of the assessments is determined by calculating total available assets and then subtracting the debt service from that and if there is a shortfall then the special assessments are to be approved. Ms. Benjamin stated that there are two ways to interpret the agreement to include as an amount to be subtracted from the total available assets so that special assessments in the future could cover the amounts the City has been required to refund. However, she could not guarantee that that would not be challenged and that is what she indicated in her letter.

Councilman Consolo stated that since Ms. Benjamin was previously unavailable and the administrator did not want to meet with the Council, he had a couple concerns. Councilman Consolo noted that when he first came on Council, he raised a question of former Finance Director Arman Ochoa in March of 2008 as to why the Urban Redevelopment TIF Fund was carrying a \$2.3M balance. He passed out an email dated March 26, 2008 in which Mr. Ochoa responded to the question starting on page 4 indicating that he was saving it to refund property owners because of all the tax appeals in progress.

Councilman Consolo commented that he has the Disclosure Reports from the initial administrator, MuniCap, Inc., from 2004 through 2008. He noted that in each of the report, it indicates that the service payments can be reduced because the property values are being reduced. He added that the 2005 report stated that they are keeping \$225,000 because we needed it for the City to run its books. Councilman Consolo expressed his concerns because he could not get an explanation on this. He added that everyone is referring to this as a missed payment in 2008, but the payment that was missed was actually in 2006, when the carry-over balance of \$2M started. It looks like the former Finance Director was saying that because he anticipated the City would have to refund the money and in reviewing the reports, that what it looks like they were saying as well.

Also, Councilman Consolo stated that in reviewing all the documentation, there are trustee accounts in the reports which seem to say that this is the amount of money the trustee has received from the City. When those accounts are compared based on what the City shows it paid, they do not give the City enough credit. Councilman Consolo passed out the pages from the 2004-2008 Disclosure Reports the entitled, "IV. Trustee Accounts" and Finance Director Jennifer Esarey's sheet entitled, "Fund 213 - Urban Redevelopment (TIF) - Amounts Received & Payments Made," which she passed out on October 5, 2010 which shows the money the City paid. He noted his concern, the first page of the Trustee Accounts in Table IV-1 under REV Fund Service Payment in 2003 the balance was \$0. He mentioned that Councilman Sims previously asked the question why and was not given an answer as to why there were no payments in 2002. Ms. Benjamin replied that it was because the project was not completed and on the tax rolls as of January 1, 2002. Mr. Consolo went on to say that the Table IV-1 (second page) shows Additional Proceeds of \$1,125,862 which is also reflected on Amount Paid on Ms. Esarey's sheet. Also the Additional Proceeds and Amounts Paid for 2004 matched. Then, the Trustee Account for 12/31/06 (third page) is where Mr. Consolo had a question. The first column of Table IV-1 is 12/31/05 Balance shows \$1,558,795, but on the previous table, the 06/30/05 balance was a \$12,000. Therefore, it was Mr. Consolo's opinion that the City made a payment of approximately \$1,546,00 in order to get up to that balance. Then, on Ms. Esarey's sheet for 2005, the payments made totals \$2.9M. However, the City only received credit for \$1,546,000 because the credit for \$1.4M is not reflected.

Further, on the same table under Additional Proceeds, \$1,825,751 was paid on 11/28/2006. He noted that was the only payment made in 2006. Ms. Benjamin noted that it may have been a question of timing as to when the 12/29/2005 payment of \$1,028,022.29 came out of the City's account. The Trustee Account for 12/31/07, Table IV-1 (forth page) shows Additional Proceeds of \$3,657,584 which is also reflected under Amount Paid on Ms. Esarey's sheet as three separate payments on 9/5/2007. The next page of Trustee Account for 12/31/08, Table IV-1 (fifth page) shows Additional Proceeds of \$4,347,895 which is also reflected under Amount Paid on Ms. Esarey's sheet as two separate payments on 12/4/2008. Mr. Consolo noted that Argus took over as administrator in 2009 and on its Summary of Account Balances (sixth page), under the Service Payment Account, it shows \$4,131,516 in Deposits being made, which is reflected under Amount Paid on Ms. Esarey's sheet as two separate payments on 7/6/2009 and 12/19/2009. Finally, on Argus' Summary of Account Balances (seventh page) for 12/31/2010, under the Service Payment Account, it shows \$4,181,783 in Deposits being made, which is reflected under Amount Paid on Ms. Esarey's sheet as two separate payments on 5/28/2010 and 9/29/2010 and the \$500,000 payment the Mayor made on 9/8/2010.

Mr. Consolo reiterated that the \$1.4M the City paid is not reflected in the documentation and he asked where the other money is that the City paid. Ms. Benjamin replied that the administrators accounted for all the money that the City sent to them. But, there was money that the City received that was not sent to them. Councilman Consolo stated that he did not look at the amounts received, rather he was looking at the amounts the City paid. He noted again that the City paid \$2.9M in 2005, but only got credit for \$1.5M. Ms. Benjamin stated that she has not reviewed the numbers and could not respond. Mr. Consolo asked how the Council could vote on the Amendment Agreement if she did not know the answer to his question.

Ms. Benjamin stated that what she was looking at is Ms. Esarey's sheet of what the City received and what the City paid. She noted that in the original agreement there is not any discretion for the City to retain any amount in the TIF Fund. Therefore, if the City received \$1,891,127.51 on 6/30/2007 and paid \$1,469,221.00 on 9/5/2007, the City did not pay over everything it was suppose to. Mr. Consolo stated the Council has not seen anything from the trustee or the administrator that tells exactly what the City owes. He added that the administrator's reports indicates that the service payments should to be reduced because the property values were reduced. Councilman Consolo questioned how he could vote on the Amendment Agreement when the City paid \$2.9M in payments, but it is not accounted for anywhere. Mr. Consolo added that he would be glad to tell the interested parties what has taken the Council so long to approve the agreement. Ms. Benjamin stated that she does have information from the County Auditor showing how much was paid into the TIF Fund in various years.

Councilman Consolo agreed that they can see how much money was received by the City and by contract it should have paid to the trustee, which is one concern. But his newer concern is what happened to the excess money because Ms. Esarey shows the City paid \$2.9M, but they did not credit the City for the full amount.

Finance Director Jennifer Esarey stated that she could not speak for MuniCap, but she has been working with Julie Burkart from Argus, Ms. Benjamin and Mayor Infeld and they went through all the documents very extensively, but she did not have the administrator's Disclosure Reports. Ms. Esarey mentioned that she created the Excel sheet which was distributed and Ms. Burkart created her own Excel sheet because she also agreed that there was a discrepancy in the 2008 payment. She noted that everything that was distributed from the County to the City and then from the City to the trustee was accounted for in Ms. Burkart's calculations. Therefore, in Ms. Burkart's calculations, the only missed payment was the one which was brought to the Council's attention. Councilman Consolo asked why then did the City not get credit for the money that it paid.

Mayor Infeld commented that there is an issue of comparing apples to oranges with regard to the tables within the Disclosure Reports because there are different time periods in different years. Mayor Infeld believed that the confusion was due to rounding issues in the trustee's reports and timing issues because the City was not turning over the payments within the 10-day time period as per the original agreement. She also mentioned that the responses given by former Finance Director Arman Ochoa in the email were incorrect because his responses went against the original agreement.

Councilman Sims agreed that the responses does not follow the agreement, but the larger issue which Councilman Consolo has raised at this meeting and months ago about the motivation for having a balance in the TIF Fund in terms of providing the City with a mechanism to cover the reductions it would experience because of potential overpayment. Ms. Benjamin stated that with 20/20 hindsight everyone recognizes that the value of the property might go down, but she did not think the people realized that the value of the property might go down or that the decision would not be final for 3 to 5 years after the complaints were filed with the Board of Revision and the refunds would be taken out later and not just a reduction in the amount that they were paying in the next year. Councilman Sims commented that it sounds like the former Finance Director and Mayor did anticipate that, but they went about it in an incorrect way in terms of trying to provide it.

Councilman Sims asked what would happen if the City finds itself in the same situation going forward. Ms. Benjamin replied that the administrator and the County Fiscal Officer's Office has now been sensitized to this circumstance. The way that total available assets reads you are to take into account service payment anticipated to be received based on the assessed values as determined by the County Auditor's Office. Therefore, the City, County Fiscal Officer's Office, and the administrator will all be more sensitive to using the lowest value that is the subject of any pending Board of Revision complaint.

Councilman Bullock noted that he raised that same question with Law Director Kenneth J. Fisher and he indicated that there is a county-wide commission which was authorized several years ago, but was not appointed. Mayor Infeld explained what happened with the Tax Incentive Review Council. She noted that in the past the County Auditor's Office, which does not exist anymore as the former Auditor's Office and the former Treasurer's Office has been combined into the County Fiscal Officer's Office, had oversight over all TIFs in the county, but now the County Fiscal Officer's Office now has oversight of all TIFs in the county. Mayor Infeld noted that the former Finance Director was contacted about the Tax Incentive Review Council, but never acted on it nor shared the information with the Mayor or Council. She added when the City was notified after she became Mayor was the first time she had heard of it. Ms. Benjamin stated that the role of the Tax Incentive Review Council, which has City representation, School Board representation, County Fiscal Officer representation, is to review any outstanding agreements with respect to TIFs or tax abatements and determine whether the parties are living up to their contractual obligations. She noted that the parties, in most cases, means the private entity that is receiving the benefit of the TIF. The Starwood owners has substantially complied with the agreement. They have been paying their service payments and have not been asked to pay a special assessment. Ms. Benjamin stated that there is clearly a heightened sensitivity on the part of the City, the County Fiscal Officer, and the administrator that rather than just take the value as it currently exists on the tax duplicate and calculate the service payments based on that, that they need to look at what the potential lowest value is and let the property owner if they feel that the calculation is done improperly and they are being specially assessed more than they should be let them come forward according to the procedure in the agreement for them to contest the special assessment. Councilman Sims inquired if the Amendment Agreement includes a provision regarding the more conservative calculation. Ms. Benjamin replied that it is not because at the time the agreement was negotiated with all the parties, the issue of the refund had not come up.

She added that they could go back and amend the agreement, but they would have to go back to all parties and get them to agree to it. In addition, there is a provision in the Cooperative Agreement that says you cannot amend the Cooperative Agreement unless the amendment is not prejudicial to the bond holders. Ms. Benjamin stated that they have drafted an opinion to the bond trustee that says the Amendment Agreement in its current form is not prejudicial to the bond holders. She added that it would not be a problem to give that opinion if the agreement was amended, but it would be a cumbersome and difficult process which would probably require notice to bond holders. She added that it is one thing to say we missed a payment, but they got paid and were not harmed by the fact that the City did not turn over the money, which has clearly been the case to date. However, Ms. Benjamin noted that if the methodology is changed by which the payments are being made, while it may not be prejudicial to the bond holders, she believes you need to give them notice because it would be a change in the way the payments are made and calculated.

Councilman Sims inquired if there is a way to assure that the most conservative calculation will be used. Ms. Benjamin stated that when the administrator's report is received each year in August it indicates what the anticipated revenues will be, what the debt service is, what fund balances are, and whether or not a special assessment needs to be collected for the next calendar year. She added that one way to assure that the most conservative calculation is being done is for everyone to read the administrator's report very carefully and ask questions about it and ask the administrator to get the report done in enough time so that it can be done and still meet the second Monday in September deadline. Mr. Sims inquired if a part of that would be confirming whether or not there were any applications for reductions. Ms. Benjamin replied in the affirmative and noted that the City does not receive automatic notification of those applications. Therefore, Councilman Sims stated that the City would have to check into it.

Councilman Consolo inquired if by signing the Amendment Agreement the City gives up its rights against the administrator in trying to become whole because of the advice that a special assessment was not needed. He noted that the City is out \$650,000 and may only be able to recoup \$300,000. He asked what recourse the City has. Ms. Benjamin replied that the prior administrator is not a party to the Amendment Agreement. Therefore, issues relating to the prior administrator are not covered by the agreement at all. She noted that the current administrator wanted only to acknowledge the Amendment Agreement and not be a party to it, and therefore, the waiver and release is not applicable.

Councilman Consolo reiterated that his main concern is what happened in the trustee account because all money was not counted for. Ms. Benjamin noted that as the Mayor mentioned that start dates are different and does not give credit for payments made by the City in the meantime. Mr. Consolo pointed out that they just went through all the numbers and everything was accounted for except for what was done in 2005. Mayor Infeld asked if the disbursements were added up on each line item. Mr. Consolo stated that he spent a significant amount of time doing this, but that was not his responsibility and that is why he made a request in February to bring in someone with expertise who knows. Mayor Infeld stated that she could do the calculations if she had a calculator. She noted that one administrator took into account all funds collected and the other administrator did not account for all the funds collected so they are not going to match. Mr. Sims stated that there is a period in 2005 that the City does not know what happened because they did not have the report. Mayor Infeld stated that she understands the question, but she felt it is comparing apples to oranges because it is different people doing the calculation and different methods of accounting. She mentioned that the County Fiscal Officer's Office houses the one person in the county that handles the TIFs. She noted that the reason for the delay which was caused on the administrator's end because of the change over in the County government it took a little time for the administrator to gather the information from the County Fiscal Officer's Office.

She mentioned that although the same person is doing it, the accounting has changed and personnel has changed. She noted that is the only information on the refunds for these two parcels. The rest of the information is not known because it is still under consideration by the Board of Revisions. Mayor Infeld stated that the City was wrong in keeping the money in the fund in anticipation of any refund due as indicated in page 5 of 6 of Mr. Consolo's email, the second to the last sentence in question 12. She noted that a mistake was made, but the Council has an obligation to make sure it honors its obligations. Councilman Consolo inquired if the question was raised in 2006 or 2007. Mayor Infeld noted that no minutes were taken at Committee of the Whole meetings or retreats at that time. She stated that the point is that the City is remiss in a financial obligation that if the City does not pay, there will be serious financial consequences to the City in the future and in the City's ability to raise money such as bond issues.

Councilman Consolo reiterated that the City is out \$650,000. Mayor Infeld mentioned that the answer to that is that the original agreement did not account for the City getting the benefit of the reduced valuation. Councilman Consolo stated that perhaps the former administrator misinterpreted the contract because they stated that service payment amounts could be reduced. Ms. Benjamin stated that every year the prior administrator's reports to the Council said that the amount that the City is going to receive in service payments will be sufficient to pay the debt service on the bonds and therefore, no special assessments are required. In the continuing Disclosure Reports not necessarily in the annual assessment report, they acknowledge that there may be reductions in the values, but they never said that the City should assess for the proposed reductions.

Councilman Sims stated that one way to assure that the City does not get caught in the same situation going forward is to take that opinion and measure it against any reductions that exist or are pending. Ms. Benjamin agreed and stated that then the City can make a determination as to whether or not the administrator properly calculated the estimated service payments net of future reductions. Mr. Sims inquired as to what happens if the City comes up with a number and the administrator has not recommended assessment. He asked if the City can assess or is there a legal barrier to the City making its own calculations. Ms. Benjamin responded that the Council disagreed with the administrator, she believes that the administrator would work with the City to figure out the answers, but the City has to accept the report of the administrator. Councilman Sims requested that a letter be directed to the current administrator putting them on notice. Mayor Infeld mentioned that the City has to rely on the administrator because the administrator is paid to do this accounting, the City is in no position to double check the figures.

Councilman Consolo noted that statements in the Disclosure Reports by the administrators for period ending June 30, 2005 (page 14), states that service payments for 2003, 2004 and 2005 will be reduced in an amount equal to the estimated refund for the overpayment of those years. He inquired if they were being conservative and saying that the service payment will be reduced because the property valuation is being reduced. Ms. Benjamin responded that they were not conservative and that yes it is possible if the property values are reduced, then the service payment would be reduced. But, she added that the Disclosure Reports are not the Assessment Reports. Mr. Consolo stated that the bottom line is that the trustee does not seem to account for all the money the City paid them and he requested to know why it does not.

Councilman Bullock inquire if it is possible to make Councilman Consolo's concern a matter of record and move on. Councilman Consolo agreed and mentioned that he will voting no on the ordinance.

**MOTION BY MR. SIMS, SECONDED BY MR. BULLOCK to approve the passage of Ordinance No. 2011-10 as an emergency measure.**

Councilman Bullock stated that the issue for him going forward is what the City has to do in order to not have this experience again. He noted that the answer he received from the Law Director and from what he heard at this meeting is that there will be more oversight. Mr. Bullock stated that he will vote in favor of the ordinance with the understanding that the Mayor, Ms. Benjamin and respective others will provide the appropriate oversight so the City does not have this experience again. Ms. Benjamin acknowledged that she heard the request. Mr. Bullock wanted something in writing. Councilman Sims stated that he also requested a letter to the appropriate parties. Ms. Benjamin agreed to forward a letter.

Councilman Sims stated that the ordinance can be dealt with separately from the question posed by Councilman Consolo. He suggested that the City continue to try to find out the reason why the City was apparently not credited for a payment that was made. Mr. Sims added that he will examine the documents more closely, but everything that Mr. Consolo demonstrated at this meeting would draw him to the same conclusion because the City shows by virtue of the analysis performed by the Finance Director that certain payments were being made and one of those payments does not appear to have been incorporated in the documents that were reviewed at this meeting. Therefore, he added that the analysis is a valid point that should continue to be pursued. Ms. Benjamin stated that she will work with the Bank of New York Mellon to get a reconciliation on a calendar year basis, apples to apples, as to what was received and when and then present that information to the Council. Ms. Esarey stated that the current administrator did confirm the spreadsheet that she presented to the Council. Councilmen Sims and Consolo agreed that Ms. Esarey's analysis was accurate, but the trustee's records do not reflect properly. Ms. Benjamin stated that if the trustee's records are reviewed it would probably balance, but the administrator used different year ends. But, she will get that information.

**On roll call, on passage to approve the passage of Ordinance No. 2011-10 as an emergency measure, all voted “aye, ” except Mr. Consolo, who voted “nay” and Mrs. Pardee, who “abstained.”**

Councilman Bullock commented that there is no one else involved in this matter who is sitting in the seats of the Council members. He did not like the remark that all the other parties have signed off on the Amendment Agreement nor did he have much respect for them saying it.

Ms. Benjamin noted that she will get a report from the trustee and draft a letter for the Council’s review instructing the administrator and requesting the County to do the calculation in such a fashion that it uses the lowest value for the future service payments so that this situation does not occur again.

**C. Ordinance No. 2011-23 To repeal Section 678.10 of the Codified Ordinances regarding fireworks (2<sup>nd</sup> Reading)**

Ordinance No. 2011-23, which was placed on first reading on May 2, 2011, repeals Section 678.10 of the Codified Ordinances regarding fireworks in its entirety. Councilman Bullock stated that the Safety Committee met on April 26, 2011 and discussed the items relating to Ordinance No. 2011-23, Ordinance No. 2011-24 and Resolution No. 2011-25. He noted that matter relating to fireworks will be replaced by the State Code. Councilman Bullock stated that the committee recommended approval of the legislation. Fire Chief John Pitchler reported that the State Code governs all aspects of fireworks. Since the State Code is more comprehensive, it was his recommendation that the local code provision be repealed.

**MOTION BY MR. BULLOCK, SECONDED BY MR. CONSOLO to approve the passage of Ordinance No. 2011-23 as an emergency measure. On roll call, all voted “aye.”**

**D. Ordinance No. 2011-24 To repeal Section 678.105 of the Codified Ordinances regarding display of aerial fireworks (2<sup>nd</sup> Reading)**

Ordinance No. 2011-24, which was placed on first reading on May 2, 2011, repeals Section 678.105 of the Codified Ordinance regarding the display of aerial fireworks in its entirety.

**MOTION BY MR. BULLOCK, SECONDED BY MR. CONSOLO to approve the passage of Ordinance No. 2011-24 as an emergency measure. On roll call, all voted “aye.”**

**E. Resolution No. 2011-25 Adopting the Cuyahoga County Emergency Operations Plan (2<sup>nd</sup> Reading)**

Resolution No. 2011-25, which was placed on first reading on May 2, 2011, adopts the Cuyahoga County Emergency Operations Plan. Chief Pitchler stated that after the terrorist attack of September 11, 2001, the federal government instituted the National Incident Management System (NIMS) so that all governments could work together under one system. The County has updated its Emergency Operation Plan to incorporate the NIMS procedures and has requested that all cities pass a resolution adopting the updated Cuyahoga County Emergency Operations Plan.

**MOTION BY MR. BULLOCK, SECONDED BY MR. CONSOLO to approve the passage of Resolution No. 2011-25 as an emergency measure. On roll call, all voted “aye.”**

**F. Motion to hold an executive session immediately following this special meeting for the purpose of discussing personnel, litigation and real estate matters**

An executive session was not required.

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

---

Susan K. Infeld, Mayor

---

Nancy E. English, Clerk of Council