

**MINUTES COUNCIL MEETING
CITY OF UNIVERSITY HEIGHTS, OHIO
DECEMBER 7, 2015**

Mayor Infeld called the regular meeting to order at 7:31 p.m.

Roll Call:

Present: Mrs. Susan Pardee
Mr. Steven Sims (7:38pm)
Mr. Phillip Ertel
Mr. Mark Wiseman
Ms. Nancy E. English
Mrs. Pamela Cameron

Absent: Mrs. Adele Zucker

Also Present: Law Director Luke McConville
Finance Director Larry Heiser
Clerk of Council Kelly M. Thomas
Police Chief Steven Hammett
Fire Chief Douglas Zook
Community Development Coordinator Patrick Grogan

MOTION BY MR. ERTEL, SECONDED BY MS. ENGLISH to excuse the absence of Mrs. Zucker and Mr. Sims. On roll call, all voted “aye.”

Pledge of Allegiance

Approval of Minutes

Minutes from Council meeting November 16, 2015

Mr. Wiseman asked that the vote for the Special Council Meeting on August 17 be corrected as well as the comments that were made pertaining to the approval of those minutes be notated.

Mayor Infeld noted that on page 2 under her report to the community that State Police should read “State Policy”

There were no other corrections or amendments to the November 2, 2015 Council minutes.

MOTION BY MR. ERTEL, SECONDED BY MR. WISEMAN to approve the Council minutes of November 16, 2015 as corrected. On roll call all voted “aye.”

Comments from Audience

Ms. Linda Johnson, 2604 Ashurst and Board of Zoning Appeals Board Member was present at the Council meeting to speak on the first agenda item regarding the appeal from the Board of Zoning ruling for 14490 Summerfield under section 1478.24(c), which was re-codified in 2001. Ms. Johnson noted that she was not present at that particular meeting but she encouraged Council to consider whether the Board operated in an arbitrary and capricious manner and if not to support its decision. The Board has received many appeals to expand driveway often in situations with several renters; and solutions have been provided where there are minimal impact of permanent additions of large impervious expansions. Ms. Johnson added “the dance of driveway cars” with children being drivers is temporary and pavement is permanent thus she encouraged Council to support the City’s building code and the decision of the Board of Zoning Appeals.

Mr. John Rach, 2603 Fenwick Road and Board of Zoning Appeals Board Member stated he was present at the Board of Zoning meeting when the Board made its ruling on the application from 14490 Summerfield to expand their front driveway by adding a parking pad. Mr. Rach noted his agreement with Ms. Johnson’s comments in that the Board of Zoning takes items brought before them serious and that they are a board of experts appointed by the Mayor. Mr. Rach stated that he himself was an architect. Mr. Rach continue to say that the house in question does have a garage located in the back of the property,

like most houses in University Heights and that type of property the Board did not fit to have a parking pad in the front of the house. Mr. Rach stated he was not aware of any other City where this type of precedent has taken place in the area and he had not seen a property where the garage is in the back and there is a parking pad in the front. Mr. Rach continued to say he did not want to set that type of precedent in the City and commented that the Board did recommend a few solutions for the applicant so that all their cars could remain off the street for parking by providing a parking pad in the back of the property.

Mayor's Report to Community

- The tree contract for pruning and removal is in effect in the Hillbrook to Cedar and Taylor to Warrensville Center areas of the City. The work has started in the Cedar/Taylor neighborhood first; trees that are to be removed have been marked with an orange dot.
- The next meeting of City Council will be the last meeting for 2015.

Agenda Item:

- A. Appeal from Ilana Avraham, 14490 Summerfield Road regarding Board of Zoning ruling from the November 10, 2015 meeting which denied the applicant's application to grant a variance to widen the existing driveway 9' to create a parking pad using concrete pavement in the front of the home.**

Mr. McConville administered an oath to all persons speaking in regards to this application.

Mrs. Avraham addressed the complaint that her request would look like a front garage, it will not, they are extending the driveway which has always been there with 2 cars in the driveway next to the house. Today it is impossible to park in the back with large vans. Mrs. Avraham stated she and her husband are citizens with knee and disability issues and are asking for their lives to be made easy by allowing a small expansion in front of the driveway that does not affect any of their neighbors, who in fact signed a petition.

Mrs. Avraham continued to say; if they do what the Board of Zoning suggested then they are eating up their entire backyard, which would be unfair to them and their children.

Mayor Infeld stated an application was made involving a home addition and everything was within the City code except for this particular issue. When the issue came before the Board of Zoning Appeals the board made some recommendations since there were already changes being made to the back property line of the home with the proposed addition and driveway extension. Mayor Infeld agreed that some of the City's Planning and Zoning codes are sixty two years old but this code is a newer look at this particular part of the Zoning and Planning code.

Mr. McConville interjected that what is being considered is the area variance under the code. The area variance is reviewed under the legal standard which is whether there is any practical difficulty or unnecessary hardship. Those standards are standards that relate to the land. For example, an unnecessary hardship is not a hardship that is anyway personal; it is a hardship that would relate to the land in such a way that the land cannot be used for the purposes for which it is zoned. That is the unnecessary hardship test as it is applied in a zoning context.

Mr. Wiseman asked Mr. & Mrs. Avraham to show the paper with the signatures they obtained from their neighbors showing their approval of the proposed driveway expansion.

Mr. Wiseman noted to Mr. McConville that he looked at the properties on Summerfield and about 9 or about half of the houses have a driveway that is wide enough for two (2) and those houses do have two (2) cars in the drive, noting that it seems that the Abrahams' are asking for something that the rest of the residents have on the street.

Mr. McConville replied that he couldn't speak to the other houses because he didn't know how those plans were approved or whether variances were granted or not granted. All he could cite was that the legal standards that apply or either the practical difficulties factors or the unnecessary hardship.

Mrs. Avraham asked Mr. McConville to explain.

Mr. McConville replied that the unnecessary hardship test is a test of whether or not the property can be used for the particular purposes for which it is zoned. If an owner can demonstrate that the property cannot be used for the purpose for which it is zoned then they have arguably met the unnecessary hardship test and a variance can be granted on that basis. Alternatively, if there is evidence presented that a practical difficulty exists a variance could be granted on that basis and the factors of the practical difficulty test is: whether the property in question would yield a reasonable return; whether there can be any beneficial use of the property without the variance; whether the variance is substantial; whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as result of the variance; whether the variance would adversely affect the delivery of governmental services; whether the property owner purchased the property with knowledge of the zoning restriction; whether the property owner's predicament feasibly can be avoided in some method other than a variance and whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance. Mr. McConville stated that those are the terms under which the legal analysis is to proceed.

Mr. Cameron asked Mr. McConville to explain further.

Mr. McConville replied that there could be properties that are zoned industrial or commercial on a lot size on which no commercial or industrial building could be constructed given the site requirements for a building such as that, whereas because homes are typically smaller, a home could be constructed on it. So someone with a commercial/industrial piece of property that was too small to build a retail establishment or factory might ask for an unnecessary hardship variance to build a home.

Mr. Wiseman commented that hardship is very subjective; one person's hardship is another one inconvenience and asked Mr. McConville what are the negative effects of Council finding what the Avrahams' have suggested, which is having to shuffle the cars around because Mrs. Avraham's father will be living there and has his own car. If this were viewed as the hardship what would be the practical.

Mr. McConville replied that the issue would be that the hardship does not relate to the land. It is a hardship that relates to the owner of the land, the individual but not to the land itself. That is what the unnecessary hardship test looks at – a unique circumstance that relates to the piece of property as opposed to the owner of the property.

Mr. Wiseman continued and asked what if Council were to find it a hardship and grant the appeal even though Mr. McConville didn't think it was a hardship. What would be the practical affect of that action?

Mr. McConville replied he would be concerned about anyone filing a 2506 appeal to the Common Pleas Court and what the Judge may think about the bases for Council's decision in that set of circumstances.

Mr. Wiseman noted that in his mind, Council is probably ok in saying most of the neighbors don't have a problem with this since they signed the letter.

Mr. Tuck-Macalla stated that most of the houses on Summerfield that have the double driveway have a garage in the front. So you have an attached single garage in the front with a double driveway.

Mr. Ertel asked if there were any houses that have a double driveway leading to the back.

Mr. Tuck-Macalla replied no, the lots aren't large enough to have a double driveway going to the back.

Mr. Wiseman noted that he thought there were some houses that have an addition with a double wide drive with a single lane goes into the back on the side of the house.

Mayor Infeld stated she couldn't recall any variances being approved by the Board of Zoning Appeals in the last 6 years for the widening of a driveway for anything other than an attached garage or a house on the hill where it was physically impossible to get behind the house for parking. This application is different because there is a fully functioning driveway and they are making a house addition, adding more cement, the lot is deeper than most University Heights lots and relatively speaking there will be a lot of remaining yard, even with the addition.

Mr. Sims asked if the proposed new addition will attached the garage to the house.

Mr. & Mrs. Avraham stated yes.

Mr. Sims asked Mr. Tuck-Macalla if for the most part if the houses/lots on Summerfield had a frontage of 50ft. So the houses that already have a double drives are no larger, but when they were originally designed they usually went into or helped facilitate parking in a garage.

Mr. Tuck-Macalla answered yes.

Mayor Infeld noted that the Board of Zoning Appeals had suggested the squaring off the concrete pad in the back to give the family an appropriate amount of extra space.

Ms. English noted to Mr. Tuck-Macalla that the Board of Zoning Appeals gave the applicant an alternative of adding the pad in the back yard and that the applicant letter to Council stated their concern that they would not be able to maneuver a car out of the space and asked if there would be sufficient turning radius to get a car in next to the garage and then back out.

Mr. Tuck-Macalla replied that he didn't see why it wouldn't be enough turning radius.

Mr. Rach stated that the applicant proposed having the parking addition in front of the home, which is not typical for University Heights. The Board of Zoning has seen and has granted variance for the addition to the driveway on the other side of the property so that the car is not in the front of the home. In this situation that is not possible because of the property line. But the back of the property affords having the extra pad either off to the side next to the garage or straight towards the rear of the property. According to the code the width of the driveway can't exceed the width of the garage.

Mrs. Cameron asked if a variance would be needed to create two (2) parking areas if the owners were willing to give up more grass area.

Mr. Tuck-Macalla replied no, the applicant could create two (2) pads in the rear yard without a variance.

MOTION BY MR. WISEMAN, SECONDED BY MR. SIMS approving the Appeal from Ilana Avraham, 14490 Summerfield Road regarding Board of Zoning ruling from the November 10, 2015 meeting which denied the applicant's application to grant a variance to widen the existing driveway 9' to create a parking pad using concrete pavement in the front of the home. On roll call, all voted "nay," except Mr. Wiseman who voted "aye."

Mr. McConville stated that the appeal was denied.

- B. Ordinance 2015-47 Authorizing the transfer of funds from the general fund \$92,246.81 to the street fund (201) and capital projects fund (401) (first reading)**

Ordinance 2015-47 was placed on first reading.

- C. Ordinance 2015-48 authorizing the return of advanced of funds from the park fund (206) to the general fund (101) (first reading)**

Ordinance 2015-48 was placed on first reading.

- D. Ordinance 2015-49 Appropriating Funds for Current Expenses and Other Expenditures of the City of University Heights, Ohio for the Period Commencing January 1, 2016 and Ending December 31, 2016 (first reading)**

Ordinance 2015-49 was placed on first reading.

- E. Motion Authorizing the purchase of nine (9) Self-Contained Breathing Apparatus Sets and tracking system from Warren Fire Equipment in an amount not to exceed \$57,187.00**

Fire Chief Zook informed Council that 95% of the cost for this equipment is covered by the second grant the department received from FEMA.

Mr. Wiseman asked if the proposed number of nine apparatus sets was enough.

Chief Zook responded that it correlates with the number of air pacs that the department needs to replace.

MOTION BY MR. ERTEL, SECONDED BY MR. SIMS authorizing the purchase of nine (9) Self-Contained Breathing Apparatus Sets and tracking system from Warren Fire Equipment in an amount not to exceed \$57,187.00. On roll call, all voted “aye.”

F. Motion Authorizing the purchase of two (2) Police Department vehicles and equipment in an total amount of approx. \$71,432.00.

Police Chief Hammett informed everyone that the current Dodge Charger vehicles are not suitable for police usage. But at the time they were purchased they were the only model vehicle that was available for police department purchase as the Crown Victoria were no longer available. If approved one of the vehicles will be a car and the other will be a SUV.

MOTION BY MRS. PARDEE, SECONDED BY MR. WISEMAN authorizing the purchase of two (2) Police Department vehicles and equipment in a total amount of approx. \$71,432.00. On roll call, all voted “aye.”

G. Motion Authorizing the purchase of Mobile Data Terminals for two (2) Police Department vehicles in an total amount of approx. \$14,180.00

Chief Hammett stated that this purchase would be under State contract and that the life expectancy for the terminals is five (5) years. Chief Hammett added that the current data terminals no longer fit the needs of the Department and that if they were repaired there would be no guarantee for how long they would last. The new Data Terminals will last approximately ten (10) years. The old equipment will be used for parts.

MOTION BY MR. WISEMAN, SECONDED BY MS. ENGLISH authorizing the purchase of Mobile Data Terminals for two (2) Police Department vehicles in a total amount of approx. \$14,180.00. On roll call, all voted “aye.”

H. Motion Authorizing the Mayor to sell two (2) 2012 Dodge Chargers on Govdeals.com

Chief Hammett commented that even though the Dodge Chargers aren't suitable for Police Departments, many Rural Agencies, Sherriff Departments, etc love them.

MOTION BY MRS. CAMERON, SECONDED BY MS. ENGLISH authorizing the Mayor to sell two (2) 2012 Dodge Chargers on Govdeals.com. On roll call, all voted “aye.”

I. Motion Approving the City's IT Policies and Procedures

Mayor Infeld stated that this is in response to the State Auditors request that the City have a written IT. This policy also refers to multiple IT policies are part of the Employee Handbook, this policy states how the computers can be used, what is and isn't allowed as far as use of the internet, emails, keeping the hardware and software secure, etc.

Mr. Wiseman asked if there was anything stating what proscribes someone from using the City computers for personal business and that there was nothing prohibiting persons from visiting unauthorized or objectionable websites. Mr. Wiseman added that in the use of software section it states that no downloaded software is to be installed except as approved by Meritech, on the chance that the City uses someone else may want general language to denote; i.e. web developer, IT department, etc.

Mayor Infeld replied that there is a reference to inappropriate uses, but particular website weren't spelled out.

Mr. McConville replied that there is language relating to sending, receiving, accessing text or images which contain material of a pornographic, racist or extreme political nature, or which incites violence, hatred, or any illegal activity.

Mrs. Cameron asked if this policy would replace what stated in the Employee Handbook.

Mayor Infeld answered no. This policy is separated and would serve as a supplement to the Employee Handbook.

Mrs. Cameron suggested that general language be used instead of naming specific brands, companies, etc.

MOTION BY MR. WISEMAN, SECONDED BY MRS. PARDEE approving the City's IT Policies and Procedures as distributed to Council with the change in the use of software section that the word Meritech (appears twice) be replace with general language denoting the IT Department or help desk. On roll call, all voted "aye."

J. Motion Approving the Finance Office Disaster Minimization Policy

Mayor Infeld stated that this too was a request of the State Auditor's Office and that it will provide a sense of recovery and set a priority timeframe in the case of a disaster.

Mrs. Pardee suggested that on page 6 of 7 under 9.1 Disaster Notification that the Safety Director be added to number 2 where it list Mayor because the Mayor serves under both roles so that it would read Mayor/Safety Director.

Mrs. Cameron asked where the document will be stored in the event that a disaster occurs.

Mr. Heiser replied at the City of South Euclid.

MOTION BY MRS. PARDEE, SECONDED BY MR. ERTEL approving the Finance Office Disaster Minimization Policy. On roll call, all voted "aye."

K. Motion to hold an executive session immediately following this regular meeting for the purpose of discussing personnel and litigation matters

Mayor Infeld stated there was a need to hold executive session for the discussion of litigation, real estate and contract negotiation matters.

MOTION BY MRS. CAMERON, SECONDED BY MR. WISEMAN to hold executive session for the discussion of litigation, real estate and contract negotiation matters. On roll call, all voted "aye."

Directors' Reports

There was no report from the Police Chief, but Mr. Wiseman thanked both Mayor Infeld and Chief Hammett for providing Police Department an escort of the new Torah scroll on South Green Road from Churchill to the Synagogue. Chief Hammett stated the Police Auxiliary volunteered.

Mayor Infeld reported that the Service Department made 12 passes around the city and completed curbside leaf pickup; the street sweeper also went out to clean the streets. The new community park project is moving along and is almost about 30% complete.

There were no other Director or Departmental reports.

Standing Committee Reports:

Finance Committee: Mrs. Pardee reported that the Joint Finance Committee and Financial Advisory Committee met on October 15, November 15 and will meet on December 9 to review the budget. Council Committee of the Whole will meet on Tuesday, December 8 and December 15 at 6:30pm and immediately go into Executive Session to begin the process of reviewing resumes and conducting interview for the upcoming vacate Council seat.

Governmental Affairs Committee: Mr. Wiseman reported that the committee will meet to begin to explore altering the City's language in the bid ordinance to include women, minority and small business enterprises to send to the Law Director for review as well as discussing Community Engagement.

Mrs. Cameron provided a brief report regarding the High School presentations regarding the children creating a Utopian Society.

There were no other standing committee reports.

Council entered into executive session at 9:04pm.

MOTION BY MRS. PARDEE, SECONDED BY MR. WISEMAN to exit executive session and to resume regular Council session. On roll call, all voted “aye.”

Council resumed its regular council session at 10:01pm.

MOTION BY MR. ERTEL, SECONDED BY MRS. CAMERON to add item L and M to the agenda. On roll call, all voted “aye.”

- L. Motion to Allow Mayor to sign a consent to the assignment and assumption agreement executed by University Heights Holding 4 LLC aka “UHH4” and University Heights LLC with the assignment being to University Square Real Estate Holdings LLC.**

MOTION BY MR. ERTEL, SECONDED BY MRS. CAMERON allowing the Mayor to sign a consent to the assignment and assumption agreement executed by University Heights Holding 4 LLC aka “UHH4” and University Heights LLC with the assignment being to University Square Real Estate Holdings LLC. On roll call, all voted “aye.”

- M. Motion Authorizing the Mayor to sign the addendum to the settlement agreement and mutual release binding between University Square Real Estate Holding LLC and the City of University Heights.**

MOTION BY MR. ERTEL, SECONDED BY MRS. CAMERON authorizing the Mayor to sign the addendum to the settlement agreement and mutual release binding between University Square Real Estate Holding LLC and the City of University Heights. On roll call, all voted “aye.”

MOTION BY MR. SIMS, SECONDED BY MR. ERTEL to adjourn the meeting. On roll call, all voted “aye.”

There being no further business to discuss, the meeting was adjourned at 10:08pm.

Susan K. Infeld, Mayor

Kelly M. Thomas, Clerk of Council