

**COUNCIL MEETING MINUTES  
CITY OF UNIVERSITY HEIGHTS, OHIO  
MEETING HELD VIA ZOOM 890 9460 6105  
MONDAY, JUNE 7, 2021**

Mayor Michael Dylan Brennan called the meeting to order at 7:00p.m.

Roll Call:

Present: Mrs. Michele Weiss  
Mrs. Sandra Berry  
Mrs. Barbara Blankfeld  
Mr. Phillip Ertel  
Mr. Justin Gould  
Mrs. Susan Pardee  
Mr. John Rach

Also Present: Law Director Luke McConville  
Finance Director Dennis Kennedy  
Clerk of Council Kelly Thomas  
Executive Fire Captain Andrew Boylan  
Police Lt. Todd Kinley  
City Engineer Joseph Ciuni  
Communications / Civic Engagement Michael Cook

**Council Meeting May 3, 2021**

There were no corrections to the May 3, 2021 City Council minutes.

**MOTION BY MRS. WEISS, SECONDED BY MRS. BLANKFELD to approval of the May 3, 2021 Council Minutes. On roll call, all voted “aye.”**

**Council Meeting May 19, 2021**

There were no corrections to the May 19, 2021 City Council minutes.

**MOTION BY MR. GOULD, SECONDED BY MR. RACH to approval of the May 19, 2021 Council Minutes. On roll call, all voted “aye.”**

**Comments from Audience**

Mr. Wertheim, 4344 Baintree Road and Reaching Heights Board Member was present to provide Council with the Reaching Heights Board monthly report. Some of the highlights from Mr. Wertheim’s report included noting that Local author and former Director of Reaching Heights Susie Kasier, wrote an article that was published in an issue of the Sunday’s Plain Dealer about the County’s contributions to school funding by the State of Ohio was critical for tax hike and the unveiling of an education funding proposal by State Senator Matt Dolan and Ohio Senate President Matt Hoffman.

Ms. Winifred Weiser, 2177 Jackson Boulevard voiced her concern about the Council agenda item regarding adding questions to the rubbish study survey and that it was extremely problematic since the survey in question is the one to gauge the feeling of residents regarding backyard garbage pickup. The city contracted with Dr. Sutton at Baldwin Wallace to design and administer an unbiased survey about the subject. Adding questions that can bias the survey can lead to challenging the results based on those additions. It will also end up wasting the money spent to develop a valid survey. Ms. Weizer asked Council to retain the unbiased nature of the survey that is being paid for. So that everyone can begin to get a grasp on what the community as a whole really would like to do with this amenity.

Councilperson Gould responded to Ms. Weizer’s concern and stated that that agenda item was to accept and not add questions designed with the aid of Dr. Sutton and the input of Council at the Service Committee meeting. This was not a separate Resolution to add questions after the survey been designed. The items that are part of the Council packet are the final survey designed by Dr. Sutton after final input from Council members at the last Service Committee meeting.

Dr. Jeffrey Eckstein, 4321 University Parkway wanted to follow up on a motion or question last month. Dr. Eckstein noted that the City’s Administration and Council had made it clear that the commercialization of residence is not going to be allowed and it was discussed last month was that Mr. McConville was going to issue a cease and desist order to the house of 4316, has that order delivered and how will that order be

enforced?

Mr. McConville responded that he did issue a letter to the owner of 4316 University Parkway shortly after the meeting, in which the City made the representation that it would. As for enforcement, Mr. McConville said he was not going to speak publicly on that, they would wait to see what happens and that they would also weigh their legal options.

Dr. Eckstein stated that this issue was also a safety issue because every day cars are parked on the street in the morning and evening and the street is used by children on their skateboards and motorized two scooters. There are buses picking up and dropping of children.

Mrs. Breski, 2485 Charney asked if the City had changed the strict laws that residents had to observe in maintaining and improving their property because she had noticed several properties that were not well maintained and sidewalks were in bad condition.

Mayor Brennan replied that the rules have not been changed and that owners are responsible for the sidewalks in front of their properties. Citations are issued from time to time. Two years ago, the city was divided into five sections so that there is a secondary year where that can be a focus on enforcement actions. Other enforcements are brought up from time to time based upon either severity of an issue or resident complaint or just observance by our housing inspectors.

### **Mayor's Report**

Mayor's Report June 7, 2021

City Hall is now open by appointment. The building department counter is open, though we ask that only one person enter the building at a time. If you are not fully vaccinated, please wear a mask when on City premises.

Summer is back! The pool is open. The tennis courts are open.

And with summer heat, we have to watch out for our dogs.

Yesterday morning I walked to Walter Stinson Community Park to get coffee. There was a small crowd around a parked car. A dog was inside, in the cargo hatch behind the back seat. Though the windows were cracked, the dog was panting, and sticking my hand through the cracked window, it was significantly hotter inside the car than outside.

Our friends at Odd Dog Coffee called the police. I went into the park and shouted to folks there if that was their car. No one claimed it. I went back, and through the cracked window on the driver side door, I was just able to reach the switch to unlock the car. The dog in the hatch was too large to pull out from over the back seat, but he had a leash on. I opened the hatch, secured the leash, and then let him out. M-E from Odd Dog brought over a bowl of water, which the dog immediately began lapping up. He then generally stayed in the shade of the car.

Please do not leave your dog in the car when it is hot out, even with the windows cracked. It gets very hot inside a car quickly, even with cracked windows.

As for everyone else, please know that SB 215, passed in 2016, codified as ORC 959.133, provides immunity from civil liability for damages to a car for breaking in to rescue a child or animal, provided the following steps are taken, as long as the person:

- (1) Determines the vehicle is locked or there is otherwise no reasonable method for the minor or the animal to exit the vehicle.
- (2) Has a good faith belief that forcible entry into the vehicle is necessary because the minor or the animal is in imminent danger of suffering injury or death if not immediately removed and, based on the circumstances known to the person at the time, the belief is a reasonable one.
- (3) Makes a good faith effort to contact the local law enforcement agency, the fire department, or a 9-1-1 operator before forcibly entering the vehicle and, if contact is not possible before forcibly entering the vehicle, contacts law enforcement or an emergency responder as soon as possible after forcibly entering the vehicle.
- (4) Makes a good faith effort to place a notice on the vehicle's windshield with the person's contact information, the reason the entry was made, the location of the minor or the animal, and the fact that the authorities have been notified.
- (5) Remains with the minor or the animal in a safe location until law enforcement or emergency responders

arrive.

(6) Uses no more force to enter the vehicle and remove the minor or the animal than is necessary under the circumstances.

Yesterday I stayed with the dog until the police arrived. And they handled it from there.

Please do not do this to your dog.

Please do not hesitate to rescue a child or a pet locked in a car if you encounter this situation.

Call the police first, and then do what must be done (and no more) to protect the life of whomever is inside.

Turning to tonight's agenda....

Among the items we are considering this evening are approvals of recommendations from the City Planning Commission. Two are projects of great import that will have a lasting impact on our community.

Item B is the approval of the lot consolidation and new subdivision plat for the South Taylor Place Condominiums. With the booming housing market, University Heights first new housing development since the 1970's comes at an excellent time. This is the work of our City Administration and the City Beautiful CIC, working together with the CH-UH School District and Knez Construction. After tonight, the marketing, sale, and construction of these homes are soon at hand. Thank you to all involved, there is much success to go around for which so many get credit.

Item D is the approval of the proposed Zichron Chaim new synagogue building project. Our administration began meeting with members of the Congregation of Zichron Chaim over their interest in constructing a new synagogue building in December 2019. Through pre-administrative review, we worked with the applicant to help them formulate a superior proposal. We urged a larger site, and the applicant acquired more land. We urged a one-way entrance off Summerfield to keep traffic from backing up on that residential street, and that is in the proposal before us tonight. The applicant heeded the requests of our police and fire department and their observations regarding public safety in the site configuration. We worked together on open space / green space considerations, the building setbacks, and other details – even where variances are required, we worked together on creating something that will be truly beautiful. The overall benefit to the community more than justifies the project. It is among the kinds of new development the City wishes to encourage, this one being one that builds community, builds upon a strong and vital congregation that has long outgrown its present accommodations. I am happy to give the Zichron Chaim project before us tonight my full support.

Thank you, this concludes my report.

### **Agenda Items:**

#### **A) Motion for the Approval of Price Quote from Starfish Computer for Consulting Assistance Work with Rea & Associates regarding the City's RFP in an amount not to exceed 50 hours or \$7,750.00**

Mr. Hanahan, Starfish stated that the proposal is in order to assist Rea & Associates with the first portion of the City's RFP project. Rea & Associates came to Starfish Computer looking for assistance with the first portion of the RFP and submitted to them documents, drawing requests and more or less a full layout report of the city's network infrastructure. Starfish is are more than happy to provide that assistance to REA and associates in getting them all the information that they need so they can complete their work. Mr. Hanahan said it was their sincere hope that proposed 50 hours or \$7,750 would be the very high end of what their portion of assistance would take and that more realistically it would be in the neighborhood of 60% of that total cost in general. Starfish's involvement would be limited to whatever Rea & Associates requests of them, anything under that amount of 50 hours or \$7,750 would not be billed to the City.

Mayor Brennan added that Starfishes has an agreement to provide the City with emergency IT services. But this quote was not emergency services, it is for additional work that Rea & Associates require when they do this type of consultation with a client. This is usually done with the on-site IT staff but the City does not have on-site IT staff, but it does have the emergency services of Starfish Computer and that is why is a separate quote.

Mr. Gould asked Mayor Brennan if a conversation of negotiation had been had with Rea & Associate or if a

conversation could be had and maybe with the intervention of the technology committee to try to get a better understanding of why this information is necessary. And if there might be a different way forward without serving this provider with this amount of money?

Mayor Brennan stated that that conversation had been held when he asked the representatives of Rea and Starfish to get together to hammer out an arrangement because it was obvious that one had information that the other needed, and the other couldn't be without that information. And if they did proceed without it, it would probably be to the detriment of the overall project. After those parties met, they came back and advised that they had worked out what was needed. As far as information back and forth or information from Starfish and Rea and Associates in particular, this particular quote, should more than suffice to cover that exchange of information? Mr. Shanahan Is there anything you'd care to add with respect to how I've characterized that or if I've mischaracterized it or not told the full story here, or if there's something in here to add, please do it this time.

Mr. Hanahan, Starfish stated that Rea & Associates approached them that when they do projects of this nature, they have an IT resource available to them that works for the entity that they're doing the project for that they can utilize to gain information. Mr. Hanahan said that once this was explained to them they explained their relationship with the city and how they are a contracted as needed for IT emergency service. Having said that, Rea & Associate asked that they would be available to them for any information requests that they might have, so that they could properly provide the requested assessment. Ultimately, it came down to the fact that Rea & Associate don't have a working knowledge of the City's current IT infrastructure and that is what they will be utilizing Starfish for in order to gain the baseline information to progress properly to provide an assessment that would give the City a sound foundation for a plan moving forward.

Mr. Gould said he was a little disappointed in Rea & Associates because they knew who the City had, and they knew that the City was using emergency services when the project went out for bid. And now for Rea & Associate to then ask the City to incur an expenditure for them to complete their work is above and beyond the outline that they provided. That is a little concerning,

**MOTION BY MRS. WEISS, SECONDED BY MR. ERTEL to approve Approval the Price Quote from from Starfish Computer for Consulting Assistance Work with Rea & Associates regarding the City's RFP in an amount not to exceed 50 hours or \$7,750.00. On roll call, all voted "aye."**

**B) Approval of Planning Commission's Recommendation to Approve the Lot Split and Consolidation of Parcels for the South Taylor Place Condominiums located on South Taylor Road**

Mr. Michael David, BR Knez Construction was present to ask for approval of the last lot split and consolidation for the South Taylor Place Townhome Development. The proposed lot split and consolidation was presented to the Planning Commission the previous week, meetings have also been held with the City's Engineer, Mr. Joe Ciuni to review any concerns that he may have had and that have been addressed or are in the process of being addressed by Knez.

Mr. Ciuni stated that he had reviewed the lot split and lot of consolidation and recommend the approval of both. A contingency was requested during the Planning Commission and that has been satisfied with the receipt of a letter from the Northeast Ohio Regional Sewer District that approved the project because they have an easement over the project. The City is also confident that OBT, Ohio Bell Telephone companies don't exist anymore so that easement will go away. Mr. Ciuni recommend approval of project.

**MOTION BY MRS. BLANKFELD, SECONDED BY MRS. BERRY for the Approval of the Planning Commission's Recommendation to Approve the Lot Split and Consolidation of Parcels for the South Taylor Place Condominiums located on South Taylor Road. On roll call, all voted 'aye.'**

**C) Approval of Planning Commission's Recommendation to Approve the Consolidations of Lots 722-12-019 (2355 Canterbury); 722-12-020 and 722-12-080 into One (1) Lot**

Ms. Penny Neisen was present to ask Council's approval to consolidate the three parcels. Mrs. Neisen said when she purchased the property the lots were already consolidated because on the County's tax website, it looks like they're consolidated but in the legal description the lots are not consolidated. The request for consolidation was recommended by the Planning Commission, who reviewed the request last week.

Mr. Ciuni reported that the requested consolidation meets all city and county standards and he recommended the approval.

Mr. Gould commented on how beautiful the property currently because prior to Ms. Neisen purchasing it, it needed some work. Noting that Ms. Neisen moved from Northcliffe, in Cleveland Heights to 2355 Canterbury it has been a joy to watch the work that she has put into it.

**MOTION BY MR. GOULD, SECONDED BY MR. RACH for the Approval of Planning Commission's Recommendation to Approve the Consolidations of Lots 722-12-019 (2355 Canterbury); 722-12-020 and 722-12-080 into One (1) Lot. On roll call, all voted "aye."**

**D) Approval of Planning Commission's Recommendations for the Proposed Zichron Chaim New Synagogue Project on South Green Road**

Mr. McConville oriented Council and the public audience that with this particular matter Council was sitting in review of zoning decisions that are made by the Planning Commission under Chapter 1274 of the City's Ordinances. Consequently, this particular agenda item is what is known as a quasi-judicial hearing under Ohio law. That means that the preceding's would follow up a pretty specific procedure that will be outline. Anyone wishing to provide testimony in connection with this agenda item would be asked to swear or affirm and oath. The format will be where the applicant presents their application which includes requests for a special use permit, request for demolition of homes, consolidation of lots and variances. Following the applicant's presentation, any member of the audience who wishes to speak in favor of the agenda item can speak in favor and those wishing to speak against the application will be given an opportunity to speak against it. The City asked the applicant and have had conversations with the applicant to only present a small number of folks in favor and reserving the right to rebut testimony in the event that there's anyone here opposed to the project. In the interest of time Mr. McConville left that decision to Mr. Berner because it was his due process right to present what evidence he would like but the City asked that the applicant be mindful of Council's time this evening. After the public has been able to present their testimony and the applicant has been able to rebut any testimony the floor will be given over to Council members to engage the applicant in any dialogue. And then as Council deems fit, they can close the floor and conduct any motions that they deem appropriate this evening.

Mr. McConville pointed out that there were a few different legal standards that would be considered in connection with the application in addition to the request for a Special Use Permit which is reviewed under Codified Ordinance Chapter 1274.01(d). That section states that a Special Use Permit shall be issued on the recommendation of the Planning Commission, subject any reasonable conditions the Planning Commission may impose after the applicant demonstrates to the Planning Commission by clear and convincing evidence that the provisions of this Chapter will be met, and that the Special Use will not impair surrounding property values or uses vehicular parking and pedestrian or traffic conditions, lighting glare at night noise pollution to others or other applicable criteria in the Planning and Zoning Code and will not be otherwise contrary to the public health, safety and welfare. Because Council is sitting in review of the Planning Commission's decision, the same legal standard is applicable the demolition request that is being made as reviewed under 124214 (b). That provision allows for the issuance of a demolition permit if one of four separate criteria are met. Those criteria are as follows: (1) the structure or building to be demolished as accessory to a permitted principal use; (2) buildings permit has been issued for basement building on the same parcel; (3) the most pertinent one - A Development Plan has been approved by Planning Commission and City Council for a replacement building on the same parcel; (4) the City Council determines that the structure or building is a safety hazard of public nuisance. The approval of the site plan and the permission to demolish homes go hand in hand, the site plan is approved, the applicant will have the right to demolish the homes by virtue of the site plan approval. And finally, there are several variances under code section 1274 that are being considered. All of those variances are area variances and are analyzed under the "Duncan versus Middlefield" Practical Difficulties Test that's developed in Ohio law. The test has several factors; (1) whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance (2) whether the variance is substantial; (3) whether the essential character of the neighborhood would be substantially altered; (4) whether the variance could adversely affect the delivery of governmental services; (5) the property owner purchased the property with knowledge of the zoning restriction; (6) whether the property owners predicament feasibly can be obviated through some methods other than a variance; and (7) whether the spirit and intent behind the Zoning Department would be observed and substantial justice done.

Mr. Berner, Architect for Congregation Zichron Chaim provided background information about their synagogue and note that a synagogue really means to the Orthodox Jewish community in particular. The community is inextricably tied to their synagogue in terms of location because they only walk to the synagogue on Saturdays they have to be within a realistic distance for that synagogue. The community has been struggling with the current synagogue location for years in trying to make it work with the congregation, which has grown. Currently it is located on the fringes of University Heights in the northeast corner. Per the City code, there is a very limited area in which a House of Worship or House of Assembly can be built. And, in order to make the situation work they been renting the auditorium in the high school on South Green Road in Beachwood across the street. The synagogue is really the heart of their community, it is something that they go to multiple times a day. They pray there and they study there. This is not a new community, it is a

community that exists within University Heights.

Mr. Berner stated that they worked hard in the pre-administrator reviews with the City to really understand the priorities of the city and tried to accommodate as many as they could and also tried to be sensitive to the neighbors and surrounding properties as well. Initially they had five properties, and then pushed to get a sixth property in order to increase the amount of green space. The building will be located on the corner of South Green and Summerfield Roads. The building will match the front setback and one of the needed variances for the matching side setback to the existing house as opposed to requiring a code setback. Both of these will have the building as far away from the neighbors as possible. There will be screening around the perimeter in order to maintain that privacy. In terms of parking needs they opted to minimize that or not minimize it to meet those needs in order to maximize green space, because they understood that was really a priority of the city, rather than maximizing parking. The request is for a small open space variance, but a large parking variance. There is an entrance only off Summerfield and both an entrance and exit onto South Green Road, that also allows for a kind of loop for emergency vehicles and access. There currently is heavy screening on the northwest but where there isn't currently screening on the Southwest edge, they are proposing heavy screening, fencing, etc.

A traffic study was completed by Michael Baker International and during peak hours that they operate and the peak hours of traffic on the adjacent streets, South Green, Timberlane and Summerfield don't overlap and even though the peak hours don't actually overlap in an absolute worst-case scenario there would be a very minimal increase level of traffic. In regards to the parking count, a survey was done on the weekdays but again, Saturdays, everyone walks without exception. During the weekday when people do drive, it's not the full congregation, because during the weekday, they don't typically have children as the children do prayers in school, and women don't attend either. In looking at site photometrics because of the fencing on the west facade, there will be zero trespass of light onto the neighborhood properties. There is a stormwater retention dry ponds with wildflower plant plantings over there and then more lawn area for a more kind of manicured landscaping as it gets closer to the building. There will also be screening of the transformer and dumpster location.

In review of the floorplan the first floor has the entrance of the parking lot to come in and there is a large sanctuary, a small classroom, coat room and another entryway on the south side coming off of Summerfield. On the second floor there is the women's balcony and a study hall. In the basement is a social Hall, which is intended for the congregants use, typically on Saturdays after services.

Rabbi Charlop stated that the need of the synagogue is obvious. There have been many different applicants, certainly over the recent past that have been asking for a synagogue, because there are more people in the city that are interested in prayer and of Jewish Orthodox belief that they go to the synagogue every Sabbath.

Rabbi Greg Roberts made note of four points that were focused around the exemplary steps that Zichron Chaim has taken to ensure that not only that the building conforms to all the city's codes, laws, procedures and processes, but also the neighborly outreach that had Mr. Berner had mentioned before that has been undertaken. (1) Zichron Chaim has engaged the City very early on, namely with the engineering the Development Director; (2) the city has taken the costly steps of securing six zones to ensure sufficient parking and green space; (3) different members of the synagogue have reached out to the neighbors bordering the proposed building and beyond and (4) the proposed synagogue has been placed on a street clean road that has existing houses of worship on it.

Mrs. Sax stated she just had a question, that being if there had been any contact with the Jewish Federation of Cleveland or the police force or whatever for security and it that had been factored in?

Mr. Berner replied that they had not gotten far enough into the project to really talk about some specific security details of the building itself. But as Rabbi Frank described at the last meeting, they do currently have arrangements with the Jewish Federation for security at the High School will likely be a similar arrangement for this proposed building.

Mayor Brennan opened up the floor to any members of the public who were opposed to the project.

Mrs. Diane Lisa Smith, 4520 University Parkway stated that her concern at this point was that even though the people from the synagogue have been in contact with them, it was such short notice as to showing how the project was going to be placed in regards to the placement of the building. What they are calling green space which is near her home, is really a dry retention pond. Mrs. Smith said she was not opposed to whatever the project was but she was opposed to the way that it is being done. Mrs. Smith said that she has not been given enough opportunity to secure a realtor and appraiser to complete research that she needs as far as verifying what the value of her home.

Mr. Berner replied that they completely intend to make the project as amenable to the neighbors as possible. And that they would like to continue those conversations with the Smiths.

Mayor Brennan opened the floor for Council members questions and/or comments.

Mr. Gould asked if the survey and petition was limited to University Heights residents meaning that they did not cross over to the City of Beachwood on the other side of South Green Road?

Mr. Berner said that they were limited to University Heights' residents, essentially on the blocks surrounding the project. Mr. Berner added that the Smiths were not interested in signing it and everyone else that was approached did sign it or were not available and that's was why they were not marked down.

Mr. Gould noting the other locations for instance, across University Parkway, where there appeared to be two houses, and then to the south on Summerfield there where are an additional two houses that weren't marked on the map, Mr. Gould asked the applicant if they heard from those residents and received any opposition.

Mr. Berner stated that they had not received any opposition from those residents because some were out of the Country or out of town, and when they came back was so close to the meeting, it just wasn't practical to do so but no opposition.

Mr. Gould asked Mr. Berner if he could speak a little bit more to Mrs. Smith's concerns about the timeline thus far? From what Mr. Gould could recall the project has been in the works for 14 years. And now they are hearing from Mrs. Gould that she heard about the retention pond behind her home last week. Mr. Gould asked if Mr. Berner could talk about how the plans have come together that included the retention pond? And if there were attempts to reach out prior to last week because it seemed to be a project long time in the making.

Mr. Berner replied that the project has only been in this location in development for maybe six months before COVID. So more of a year and a half, not 14 years. But prior to the conversations they had two weeks ago, they had been in contact with Mrs. Smith's mother who lives at the house over a year ago and at that time there had been one or two conversations.

Mr. Gould noted that in looking at the project and the package that Council had before them, the applicants had been so accommodating in many ways, and he recognized how difficult it's been with the lack of prior notice as to the details and the planning with what Mrs. Smith wanted to do. It sounded like the applicant was willing to work with her and considering how cooperative they had been in the past. Mr. Gould asked Mrs. Smith if she was comfortable with proceeding tonight with the promises that you've heard from the applicant?

Mrs. Smith said again her opposition was that she has not had enough time for her property values to be assessed in regards to the project and the retention pond.

There were no other comments or questions from City Council.

Mayor Brennan made mention that at the Planning Commission proceedings, the Board went through and passed nine or more different motions. All of them were made subject to the condition of the City entering into a Development Agreement. Mayor Brennan asked Mr. McConville if there was a preference or a better practice with respect if Council should go through and consider each item separately? Or is it acceptable given the detail that the Planning Commission already went through for Council to simply accept them wholesale?

Mr. McConville replied that Planning Commission did establish a detailed record about each separate item; one through nine under agenda item D. There are different legal standards that apply to a few of those different matters. However, a record has been established that applied the legal standard in each case with respect to Planning Commission's decision. Mr. McConville offered that if Council wanted to make a record that established that they themselves didn't want to go through them one by one, but rather prefer to accept the recommendations of the Planning Commission wholesale, they could do that. But there would need to be a discussion on the record about each member agreeing that they didn't want to consider any particular issue separately. Mr. McConville said he was comfortable with that as long as a record was established, that council members did not need or want to consider each item one by one but with a wholesale motion. But otherwise, if that's not the case, or if a record isn't established, we should go through them one by one.

Mr. Rach noted that he serves on the Planning Commission as well and in hearing all the testimony and entire case before us at that meeting he felt pretty well in Mr. McConville's suggestion where it is on the record that there was no need to consider and vote on each item one by one. Mr. Rach said he approved this project as a whole and the Planning Commission recommendations with all the variances that went with it unless there was someone on council who felt that one of the variances is out of line should not be considered as part of the project as a whole.

Mrs. Blankfeld stated she was also at the Planning Commission meeting and that she had a very clear understanding of what each of variances consisted of so she was comfortable. But wanted to make sure that her colleagues are also comfortable, if they had not attended the Planning Commission meeting because there was a lot of discussion. Two of items are important and Mrs. Blankfeld thought that they should be considered

separately, but she would leave the choice to her colleagues and Mr. McConville.

Mayor Brennan added that everything was gone through extensively at the Planning Commission level and like Mr. Rach he voted in favor of each and every one of the separate motions. But if there is a particular portion here that gives somebody pause where they want to be heard, we do not want to not have you heard. And we do not want you to feel as if you cannot support the project in total, if you were not heard on a part or series of parts that you feel needs to be discussed further or that you feel that you need to be heard on, and so on. If there is any among the nine sub parts, that gives any member of Council pause, or they would like to discuss further, seek clarification and so on Mayor Brennan said he would encourage that been done at this point.

Mrs. Weiss commented that she also attended the Planning Commission meeting and she was fine in voting for a single motion for all the items.

Mr. Gould said that the portion that gave him pause was about timing, and specifically the retention pond issue behind Mrs. Smith's home. Mr. Gould added that he was just trying to put himself in the shoes of a resident who's going to have a massive change to their neighborhood. And if this was something where there was an emergent need to proceed without giving time for a resident to consider and be able to provide feedback he would support that. But it doesn't seem like there's an emergent need. If there's a portion that specifically deals with the retention pond otherwise Mr. Gould thought the project was fantastic and would give his support. But Mr. Gould felt that Council should give Miss Smith additional time to consider what's happening in her neighborhood and behind her house.

Mrs. Weiss commented that she did not at all want to disregard Mrs. Smith's questions on the project, but it seemed that she has been aware of the project for over a year. And having a sit down with her and the members of that Congregation's Board and in the City together would allow resolution to this. Mrs. Weiss added that the applicant said a few times during this meeting that they want to work with Mrs. Smith and the City, additionally Mrs. Weiss said she was sure working with the engineer a solution could be found that all the parties could agree. Mrs. Weiss noted that she did not at all think that it would be appropriate to table this especially when the Planning Commission has approved it.

Mr. Gould asked Mr. McConville what options did Council have, after this is approved if there is no resolution and the property values go down or there's a mosquito issue, etc. because of the water sitting in the retention pond. Would that come back to Council again or is this the final approval?

Mr. McConville replied this would be the final approval. Conditions of contingencies were put in place on the approvals and the Planning Commission applied them to each and every Variance, as well as the approval for Special Use Permit, the demolition consolidation. Those contingencies were numbered and each of the requirements that were set forth in a letter that Mr. Ciuni generated on June 3 2021 that relates to the site plan and those plans are not yet finalized but will be addressed. The contingency that the developer enter into a Development Agreement with the City in connection with the project is a document that is negotiated with the developers. So, while the approval is final, you know, the development agreement is something that is, is a condition, and that's a document that would be exchanged and negotiated.

Mrs. Weiss commented and asked if Councilman Gould had reservations that Council could vote on each of the nine points one by one to continue the meeting?

Mr. McConville replied yes and asked Mr. Ciuni if he had any comments.

Mr. Ciuni said that his letter speaks for itself and that he recommended approval of the variances. Regarding the site plan, there are several items need to be resolved, because they don't have final plans yet and those need to be addressed before recommendation for permit approval to start construction. But those items are not factors that should weigh in on the voting tonight.

**MOTIONS REGARDING AGENDA ITEM D) the Approval of Planning Commission's Recommendations for the Proposed Zichron Chaim New Synagogue Project on South Green Road.**

**MOTION BY MRS. WEISS, SECONDED BY MRS. BLANKFELD to Approve item D (1) the request for a Special Use Permit allowing a House of Assemble for the Permitted Use of a House of Worship in accordance with Section 1274.01(a)(1). On roll call, all voted "aye," except Mr. Gould, who voted "nay"**

**MOTION BY MRS. WEISS, SECONDED BY MR. RACH to Approve item D (2) to condition any and all other approvals given this evening relating to demolition, consolidation of the lots, variances and site plan approval upon 1) compliance with the requirements set forth in Mr. Ciuni's letter of June 3, 2021 to the applicant; 2) the entry by the applicant into a development agreement with the City. On roll call, all voted "aye," except Mr. Gould, who voted "nay."**



**MOTION BY MR. WEISS, SECONDED BY MR. RACH to Approve D (3) the Demolition of Houses located at 14499 Summerfield; 2392, 2402, 2414, 2420 and 2424 So. Green Road. On roll call, all voted “aye,” except Mr. Gould, who voted “nay.”**

**MOTION BY MR. RACH, SECONDED BY MRS. WEISS to Approve the Consolidation of the following lots: 14499 Summerfield (721-26-068); 2424 So. Green (721-26-003); 2420 So. Green (721-26-002); 2414 So. Green (721-26-001); 2402 So. Green (721-21-067) and 2392 So. Green (721-21-021). On roll call, all voted “aye,” except Mr. Gould who voted “nay.”**

**MOTION BY MRS. WEISS, SECONDED BY MRS. PARDEE to Grant a Variance of 1.699 acres for the minimum lot area requirements set forth and 1274.02 (A)(1) where, as presented here, the proposed plan calls for 1.301 acres and the acreage requirement is three (3) acres. On roll call, all voted “aye,” except Mr. Ertel and Mr. Gould, who voted “nay.”**

**MOTION BY MRS. WEISS, SECONDED BY MRS. BLANKFELD to Grant a Variance to the rear yard parking driving setback requirement of 18 feet whereas here, the proposed setback is 12 feet at certain portions and 15 feet at others of the rear yard and the setback is 30 foot. On roll call, all voted “aye,” except Mr. Gould who voted “nay.”**

**MOTION BY MRS. BLANKFELD, SECONDED BY MR. RACH to Grant a Variance of 5% from the required open space minimum requirement of 50% as set forth and 1274.03 (B), whereas here, the plan calls for 45% open space and the requirement is 50%. On roll call, all voted “aye,” except Mr. Gould who voted “nay.”**

**MOTION BY MRS. PARDEE, SECONDED BY MRS. BLANKFELD to Grant a Variance from the parking facilities requirements set forth in 1274.04 of 222 parking spaces where the code requires 261 parking spaces and the proposed site plan offers 39 parking spaces. On roll call, all voted “aye,” except Mr. Ertel and Mr. Gould, who voted “nay.”**

**MOTION BY MR. RACH, SECONDED BY MRS. PARDEE to Grant a Variance for a side yard setback to comply with the requirements of 1274.0 to be to cause the building to line up with the existing structure at 244 South Green Road. On roll call, all voted “aye,” except Mr. Gould, who voted “nay.”**

Before proceeded with the next motion Mr. McConville noted that the request of the applicant was for Site Plan approval and the Planning Commission had debate about and elected to grant the site plan approval without the proposed four (4) foot aluminum fence around the stormwater retention area. Mr. McConville asked Council if they wanted the motion to be with a fence or without the fence.

Mayor Brennan recommend that the Council remain true to the Planning Commission's recommendation of Site Plan approval with no fence. Noting that there was also discussion that should for safety reasons it was to become appropriate to have a fence nevertheless, that administratively that could be accomplished and that was a small enough alteration from the site plan that it wouldn't require returning to Planning Commission. Mayor Brennan said that that was the legal opinion of the Law Director at the Planning Commission meeting.

Mr. McConville responded that Mayor Brennan was correct and asked if there was a motion to approve the site plan with one change that there not be a requirement for a four-foot aluminum fence around the stormwater retention area.

**MOTION BY MRS. WEISS, SECONDED BY MRS. BLANKFELD to approve the site plan with one change that there not be a requirement for a four-foot aluminum fence around the stormwater retention area. On roll call, all voted “aye,” except Mr. Gould, who voted “nay.”**

Ordinance 2021-16 Adopting the City of University Heights Employee Policies and Procedures Manual, and Declaring an Emergency (on second reading)

**E) Motion Approving Ordinance 2021-16 Adopting the City of University Heights Employee Policies and Procedures Manual, and Declaring an Emergency (on second reading)**

Finance Director, Mr. Kennedy reported that he had been working with Mr. McConville to incorporated all the necessary changes into the document. But still needed to review those individually with the people that those changes would impact and that has not been able to be done at this point. In fairness to the affected people Mr. Kennedy asked that Council allow another two weeks to get that accomplished. The manual

should then be in a position to be approved by council at the second meeting in June.

In light of that Mayor Brennan asked for a motion to table this item to the next meeting.

**MOTION BY MR. RACH, SECONDED BY MRS. BLANKFELD to Table Approving Ordinance 2021-16 Adopting the City of University Heights Employee Policies and Procedures Manual, and Declaring an Emergency. On roll call, all voted “aye.”**

**F) Motion Approving Resolution 2021-22 Recognizing June 2021 as “Pride Month” in the City of University Heights**

Mayor Brennan read Resolution 2021-22 into the record.

Whereas the City of University Heights is a diverse community comprised of people from all walks of life and a multitude of backgrounds living together in harmony. And whereas the people who make up the LGBTQIA community being people who identify as lesbian, gay, bisexual, transgender, slash queer, intersex, asexual, a romantic, together with our allies are our friends, family and neighbors seeking acceptance for who they are within the greater community. Whereas with the Stonewall uprising in 1969, thus began the modern civil rights movement for LGBTQIA individuals and this movement has made significant progress in the pursuit of equal rights and protections under the law. And whereas in 2019, the City Council of the city of University Heights adopted a resolution commemorating the 50th anniversary of the Stonewall uprising. And whereas in 2020 Mayor and all members of city council jointly sponsored and enacted an ordinance prohibiting discrimination against LGBTQIA individuals and employment and public accommodations, joining Cuyahoga County and other select communities around Ohio, while the state and federal governments continue to fail to offer the same protections against discrimination. And whereas Mayor Michael Dylan Brennan signed a proclamation declaring June 2020 as Pride Month in the City of University Heights, which among other things recognize the anticipated imminent passage of the after mentioned legislation. And whereas the City of University Heights raised the pride flag at City Hall this month, as it has every June since 2019, in commemoration of the 30th anniversary of Stonewall and in celebration of Pride Month, and whereas the month of June is widely recognized as Pride Month and communities throughout our nation, and whereas the arc of the moral universe is long, but nevertheless bends towards justice and that the virtuous pursuit of justice must be tireless and relentless. And whereas it is the strong desire of the city of university rights to continue to create a welcoming community for all people, regardless of sexual orientation, gender identity, gender identity and expression, that people in the city feel valued, safe, empowered and supported by their peers and community leaders, that we continue to lead by example, until our state and our country implement the same protections against discrimination that we have in this city. Now, therefore, be it resolved jointly by the Mayor and City Council of the City of University Heights, Ohio that section one the Council of the City of University Heights, hereby declares June 2021 is LGBTQIA Pride Month in the City of University Heights. Section two, the Clerk of Council is hereby instructed to distribute notice of the passage of this Resolution, in her usual and customary way. Section three, it is hereby found to determine that all formal actions of council concerning relating to the passage of this Resolution were adopted in Open Meeting of this Council, and that all deliberation of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements. Section four, this Resolution is declared to be an emergency measure necessary for the preservation of the public peace, safety, health and welfare of the citizens of the City of University Heights, it shall therefore become effective upon its passage by the affirmative vote of not less than five members of Council on approval of the Mayor.

**MOTION BY MRS. BLANKFELD, SECONDED BY MR. GOULD Approving Resolution 2021-22 Recognizing June 2021 as “Pride Month” in the City of University Heights. On roll call, all voted “aye.”**

**G) Ordinance 2021-19 Authorizing the Transfer of Funds from the General Fund (100) to the Capital Improvements Fund (400) and Declaring an Emergency**

Mr. Kennedy stated that this was a planned transfer and was part of the permanent budget for 2021.

**MOTION BY MRS. BLANKFELD, SECONDED BY MRS. WEISS for the passage of Ordinance 2021-19 Authorizing the Transfer of Funds from the General Fund (100) to the Capital Improvements Fund (400) and Declaring an Emergency. Roll call on suspension of the rules, all voted “aye.” Roll call on passage, all voted “aye.”**

**H) Resolution 2021-20 Adopting the Alternative 2022 Tax Budget (on first reading)**

Mr. Kennedy stated that this was an annual requirement. According to State Law, the Tax Budget for 2022 needs to be filed with the County on or before July 15, 2021. There are no changes to the proposed tax rates that will be applied in 2022.

Resolution 2021-20 was placed on first reading.

**I) Ordinance 2021-21 Extending the Appointment of Rachel Mullen as Assistant Clerk of Council for the Limited Purpose of Performing Duties on Behalf of The Civil Service Commission for the Period of July 1, 2021 through December 31, 2021 and Declaring an Emergency**

Mayor Brennan spoke to this briefly and stated the Police and Fire appreciation for the attention and care that Ms. Mullen has dedicated to this role and in assisting getting the examinations for both incoming potential incoming employees as well as promotional of existing employees nearly complete at this point in time that we were all hoping that we would be able to accomplish as well as the additional assistance of the Clerk of the Clerk of Council in order to provide that kind of singular focus to this particular task. The work is not quite done, although the bulk of it is done it makes more sense for Ms. Mullen to continue the work and to continue the periodic work that comes up with the Civil Service Commission to see through the projects that she has been working on. Mayor Brennan said that the appointment was a success and that originally it was six-month trial appointment, he would recommend that another six months be allowed. Thus, this Ordinance to extend by an additional six months and is being presented on emergency basis to be in effect immediately.

Mrs. Blankfeld noted that having been a Clerk of Council for a good number of years with the City of Beachwood she ran the Civil Service process for both promotional and new hires. So, she knew how much work was involved and the intricacies and how important it is to be timely so that the City's needs can be met for hiring. Mrs. Blankfeld said she was really impressed with the work that Ms. Mullen did because she came into it, basically blind and not having that wealth of experience behind her.

**MOTION BY MRS. BLANKFELD, SECONDED BY MRS. WEISS for the passage of Ordinance 2021-21 Extending the Appointment of Rachel Mullen as Assistant Clerk of Council for the Limited Purpose of Performing Duties on Behalf of The Civil Service Commission for the Period of July 1, 2021 through December 31, 2021 and Declaring an Emergency. Roll call on suspension of the rules, all voted "aye." Roll call on passage, all voted "aye."**

**J) Motion Approving 2021 Street Improvement Program Change Order #1 for NES Corporation Inc. Contract in an amount not to exceed an additional Contract Amount of \$30,000 (7.7% increase) bringing the Total Contract Amount not to exceed \$416,643.00**

Mr. Ciuni stated that the road program resurfacing project has started this year and after removing the asphalt a thorough examination of the curbs was done and it was discovered that the City did not have enough quantity set up in the bid price for the curbs especially on Hillbrook. Mr. Ciuni mentioned that Hillbrook was considered a through street versus a local side street so the City would like to have full curbs the entire stretch, plus two other things happened. After the bid there were two major water main breaks; one on Washington near John Carroll University by Elmdale and one in front of Garrity School on Wrenford. The street repairs above those water main breaks were too large for the Service Department so the road contractor was asked to repair those necessitating this request to approve change order number one for \$30,000 to the contract.

Mrs. Weiss asked how were the curbs, miscalculated and if it was an internal miscalculation or a different department?

Mr. Ciuni replied that normally they take just a percentage of the length of the street, but until all of the asphalt out and exposed you can't tell the exact amount, you just have to use your judgment and, in this case, it was underestimate.

**MOTION BY MR. ERTEL, SECONDED BY MRS. BERRY for the Approval of the 2021 Street Improvement Program Change Order #1 for NES Corporation Inc. Contract in an amount not to exceed an additional Contract Amount of \$30,000 (7.7% increase) bringing the Total Contract Amount not to exceed \$416,643.00. On roll call, all voted "aye."**

**K) Motion to Accept Questions for 2021 Rubbish Study and Proceeding with Printing of Survey**

Mr. Gould reported that the Service and Utilities Committee had been working for the past several months on creating a survey that would go out to residents as recommended by the solid waste study that was completed by the City. The survey would gauge residents' views on the proposed change to municipal waste collection services. At a previous session of Council, Council approved entering into a contract with Dr. Tom Sutton, Baldwin Wallace University. There was also participation with the Administration including the Mayor and members of Council at two committee meetings and since then the process that would include the submittal of questions to Dr. Sutton for consideration as he designed the survey. Most recently the committee met last week to go over those questions and submit the proposed revision Dr. Sutton. Dr. Sutton finished the revisions expediently and that work has been submitted to council as part of their packet this evening.

Mr. Gould suggested turning the floor over to Mr. McConville so that he could discuss some concerns that were raised as part of this process so that it can be made part of the record, as well as the legal opinions that he has made regarding an issue that was raised with the potential implications of the Cleveland Heights/University Heights School audit finding by the State of Ohio that gave some concern that perhaps the spending public money on this survey may be implicated by the auditor's decision. Mr. McConville was asked to give an opinion as to whether or not it was appropriate to proceed with the meeting with Dr. Sutton to finalize the survey, and then also if it would be appropriate to proceed with the survey itself to send out to residents.

Mr. McConville stated that Mr. Gould was alluding to a concern that arose out of an audit finding that was made against the Cleveland Heights - University Heights School District in connection with a survey that went out that related to the then proposed school levy and the findings. Mr. McConville said he took a close look at Ohio Revised Code Section 9.03 and the annotations that fall under that section in connection with very specific facts that relate to the city's current situation. And in particular, Mr. McConville said he make a point of walking through what he considered to be important facts in this opinion, that include the city's having obtained a report and a solid waste collection, study and report from GT Environmental. That included within that report was a specific recommendation by the third party, GT Environmental that a survey be conducted of the community on particular issues. Code Section 9.03 is a section that presents both permissive expenditures and prohibited expenditures of public funds in connection with political campaigns, issues and candidates. In particular, that section allows for the publication and distribution of newsletters with the use of public funds, and then critically, the following language or any other means, or any other means to communicate information about and this is also important language, plans, policies and operations of the political subdivision to members of the public. Mr. McConville said that it was his judgment that the survey in question falls squarely into that particular language of Section 9.03 and that communication using other means, and importantly about plans, policies and operations, and also importantly, not about particular candidates, and not about a levy not about a political campaign opinion. Mr. McConville rendered that it was very simply the expenditure of funds by the City of University Heights for the development, mailing and analysis of the solid waste survey is permissible. Mr. McConville walked some key facts: 1) the solid waste survey relates to an issue or policy of general concern in the city, 2) the solid waste survey seeks to disclose and gather information about the expenditure of public funds, 3) the solid waste survey has been contemplated since May 15, of 2020. Upon issuance of the GTP report, and was recommended by a third party, and discussed and worked out in public for a period of months, 4) four members of Council and the Mayor have had the opportunity to participate in drafting the proposed solid waste survey. That is a point that is directly relevant to the public comment we heard earlier, this meeting offered by Ms. Weizer in making sure that the survey is free from any bias, 5) that there is no ballot issue or levy or campaign issue pending, 6) that the outcome of the survey is not known, and therefore cannot be seen to favor any one political candidate over another without knowing its results. Mr. McConville also noted that there was a prohibition in Code 9.03 that relates to a prohibition against knowingly conducting a direct or indirect transaction of public funds to the benefit of any of the following it lists a number of categories that include Campaign Committee, political action committees, legislative campaign funds, political party candidate. In this case, the money is directly a fee for service, its fee being paid to third party vendor to develop a product, the contents of which are not, or the data in connection with which has not yet known. So, based on all of that, and with the understanding that an audit finding will now fall squarely on Mr. McConville having rendered a legal opinion, in that he was comfortable that the City can proceed with the survey.

Mr. Gould said that previously in advance of last week's committee meeting the Vice Mayor together with himself called Mr. McConville and asked, given several items, including the fact that there would be no additional expenditure incurred by the presentation of the questions, and that Mr. Sutton had already completed a certain set of work and advised that the meeting there was no problem with that meeting going forward.

Mr. McConville stated that was correct and make one distinction that the two topics were separate legal issues and this one in particular was a contract issue. One could argue that Mr. Sutton had performed services and reliance on representations that had been made to him, both in the form of Council's motion that had been

passed on the one hand, and then the participation of Council and the Mayor in meetings. Again, Mr. McConville thought it was material that Mr. Sutton was not going to be charging any additional amounts for the services that he was running at that particular meeting.

Mr. Gould commented that if Council would recall that when last the issue of the survey was before Council, Council approved the design and tabulation expenditures for Mr. Sutton and separately stated that we would return to council with the plan to mail. In working with Mr. Cook, a couple potential options to get this survey out to each household in the city have been identified. 1) use an outside provider that that maybe slightly less expensive than the printer the City uses and works well with and if the administration is in support of using that individual then that is who we will go with. Mr. Gould said he thought it's only appropriate to give the Administration, as well as Council the opportunity to review the opinion that Mr. McConville rendered, raise any questions or concerns that with that, and also will give the opportunity should Council all be an agreement and no additional clarifications are necessary that Council gets that mailing plan the next Council meeting.

**MOTION BY MR. GOULD, SECONDED BY MRS. BERRY to table this item until the next meeting, for those reasons. On roll call, all voted "aye."**

**L) Motion to Hold an Executive Session immediately following this Regular Meeting for the Purpose of Discussing Personnel, Legal and/or Real Estate Matters**

Mayor Brennan stated that there were three items for discussion during Executive Session. To provide an update on University Square, the second matter regards pending litigation and the third item is a personnel matter.

**MOTION BY MRS. BLANKFELD, SECONDED BY MR. GOULD to Hold an Executive Session immediately following the Regular Meeting for the Purpose of Discussing update on University Square, pending litigation and a personnel matter. On roll call, all voted "aye."**

**Director's Reports**

**Finance Department – Dennis Kennedy** stated that he would provide Council with financial reports soon.

**Department of Fire – Chief Perko** reported that hydrant testing is completed and that 22 home safety program inspections have been completed so far.

**Service Department – Jeffrey Pokorny** reported that the swimming pool has opened for the season and programs will start next week.

**Housing and Community Development – Geoff Englebrecht** provided the stats of phone call, emails, inspections and other statistics for the department. The department also updated the community with a pre-construction meeting recently regarding the property that is to be built at 3509 Raymont. Lastly, again, the department will be aggressively pushing cases for involving vacant and abandoned properties to Council so that action can be taken to resolve these troubling cases.

**Communications/Civic Engagement – Michael Cook** reported that the City's June newsletter would be out at the end of the month so that people can be reminded about the Fourth of July parade and inform them of the route which is the traditional route that is used for the Memorial Day Parade.

**Economic Development – Susan Drucker** provided an update for the comprehensive zoning code project and stated that they have started the interview process for the consulting firms that submitted bids. The hope is to come back before Council with a recommendation for approval before summer recess.

There were no other director reports.

**Standing Council Committees:**

**Economic Development Committee** – Mr. Rach stated that interviews of the consulting firms that submitted bids had begun and updates will be provided to Council as soon as possible.

**Finance Committee** – Mrs. Weiss reported that the finance committee will meet in the next week or two to discuss some of the vacant homes that the Housing Director has spoken about.

There were no other committee reports.

**MOTION BY MR. RACH, SECONDED BY MR. GOULD to resume the regular Council Meeting session. On roll call, all voted "aye."**

**MOTION BY MRS. BLANKFELD, SECONDED BY MR. RACH to adjourn the meeting. On roll call, all voted “aye.”**

There being no further business, the meeting was adjourned at 10:21p.m.

---

Michael Dylan Brennan, Mayor

---

Kelly M. Thomas, Clerk of Council