

**CITY OF UNIVERSITY HEIGHTS, OHIO
SPECIAL COUNCIL MEETING
AUGUST 15, 2023**

The Special Council meeting was held at Wiley Middle School, 2181 Miramar Boulevard, University Heights, Ohio. Mayor Michael Brennan called the meeting to order at 7:00 p.m.

Roll Call:

Present: Councilman Brian King
Councilwoman Threse Marshall
Councilman John Rach
Councilwoman Sheri Sax
Councilwoman Michele Weiss
Councilwoman Winifred Weizer

Absent: Councilman Chris Cooney

Also Present: Law Director Luke McConville
Clerk of Council Kelly M. Thomas

Motion by Mrs. Weiss, second by Mr. King, to excuse the absence of Councilman Cooney. On roll call, all voted "aye."

Agenda Items

- A. Motion to Approve the August 3, 2023 Planning Commission Recommendation for the Approval of the Application from Drees Homes for the demolition of the existing home located at 2519 Claver Road and the approval of the Site Plan for the Construction of the new home as submitted contingent on the lot coverage variance.**

Mr. McConville reported that the Planning Commission approved a site plan for a replacement home on the site as submitted contingent on a lot coverage variance and a side lot variance being previously granted; also contingent on the developer entering into a development agreement with the city to provide security and demolition for the construction of the new home. Mr. McConville acknowledged that another builder had presented plans for demolition and site plan approval contingent on obtaining variances from the Board of Zoning Appeals (BZA) and they did obtain same. Mr. McConville noted that variances run with the land and variances the applicant needs are already in place. He noted that the proposed plan is substantially the same as the one initially approved by the Planning Commission and Council. Mr. McConville added that the administration would ask for approval for the developer to proceed, contingent upon entering into a development agreement.

Mayor Brennan agreed that is what the administration is seeking as well as there should be an appropriate surety bond posted. With reference to the construction and completion of the project, Mayor Brennan pointed out he made a motion approving this at the Planning Commission with a second by Mr. Casey; Mr. Reichel abstained.

In response to a question by Ms. Weizer regarding whether or not a motion should be amended, Mr. McConville noted it should be clear that any approval is contingent on the developer entering into a development agreement.

Mr. Rach emphasized the importance of the bond and cited an example of a similar situation where a house was demolished and construction of the new house was on hold for several months. Mr. Rach suggested that the Building Department follow-up to see how many months are permitted before steps taken. The city does not want to have houses missing.

Mrs. Weiss stated that it is great that homeowners are upgrading and adding value to the city, and that when a home is demolished as long as it is replaced with another one, she wholeheartedly supports it.

In response to Ms. Weizer's query, Mr. McConville reiterated that due diligence has been done on the variances for this project and the variances have been previously granted.

Motion by Ms. Weizer, second by Ms. Marshall, to approve the August 3, 2023 Planning Commission Recommendation for the Approval of the Application from Drees Homes for the demolition of the existing home located at 2519 Claver Road and the approval of the Site Plan for the Construction of the new home as submitted contingent on entering into a development agreement including a surety bond. On roll call all voted “aye”.

B. Ordinance 2023-36 Amending Codified Ordinance Section 1064.05 Entitled “Storage Behind Rear Building Line” and Declaring an Emergency. (on second reading)

Mayor Brennan recognized Councilwoman Weizer, sponsor of this legislation. Ms. Weizer stated that the city has developed differently, so storage behind the rear foundation line is impractical, particularly for those with an attached garage. She noted that she discussed this with Mr. Englebrecht, Housing and Community Development director, and it was noted that the City has not cited residents as long as garbage cans are located behind the front foundation line. This amendment changes the rear foundation line to front foundation line, and brings more harmony with actual city practice.

Mayor Brennan added that discussions with Mr. Englebrecht after a previous ordinance was passed resulted in the housing inspectors delaying citations for cans placed on the side of the house versus in the back of the house until Council could review this further.

Mrs. Weiss thanked Ms. Weizer for her commendable role as Chair of the Building and Housing committee recognizing a need from residents and taking action right away.

Motion by Mrs. Sax, second by Ms. Weizer on emergency to pass Ordinance 2023-36. On suspension of the rules, all voted “aye”. On the main motion to adopt Ordinance 2023-36 Amending Codified Ordinance Section 1064.05 Entitled “Storage Behind Rear Building Line” and Declaring an Emergency (on second reading), all voted “aye”.

C. Ordinance 2023-40 Ordinance Amending Codified Ordinance Section 1246.01 Entitled “General Provisions” for the Purpose of Eliminating the Residency Requirement for Membership on the Architectural Review Board, and Declaring an Emergency (on Emergency)

Mayor Brennan stated that there has been a vacancy on the Architectural Review Board (ARB) since January and the position has been advertised on numerous occasions. Mayor Brennan stated that he did receive one applicant who is a resident, but is employed by the same firm as two other members of the ARB; it seemed inappropriate to have three of the five members of the board from one firm since if they all had to recuse themselves because that firm was presenting, that would not be productive – lack of quorum. He further described the dilemma and explained recruitment efforts and noted that one other application received was deemed suitable for the position.

Mrs. Weiss expressed concern about hiring a non-University Heights resident; it would not be in the City’s best interest. She noted that the current ordinance is broad so that if qualified architects cannot be found, a landscape architect, urban designer or related disciplines, as the Mayor mentioned, could be sought from residents of University Heights

Mr. Rach reported that he discussed this with members of the ARB and noted that they had not been aware because they had not been consulted that the Board was going to allow non-residents. Mr. Rach asked if any applications have been received since this packet has gone out. Mayor Brennan stated that he has received one. Mr. Rach indicated that there would be two coming in and that he worked on recruiting applicants. There was a lengthy discussion regarding obtaining applicants and how, and that there should be an alternate position as stated in the ordinance, but there has not actually been an alternate. Mr. McConville cited language in the Code regarding an alternate on the ARB.

There were differing views of how member(s) were not still on the ARB, the composition of the ARB, that most cities don’t have non-residents on the board, and that a search has not been exhausted. Mayor Brennan stated that he would not hire someone at this time from the same firm that Mr. Rach serves as the Operations Manager. It was noted that the architect community is very small.

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Mr. McConville stated that this ordinance defines the characteristics of a member of the ARB; not about an appointment or a particular project that any architect has reviewed. This defines the characteristics an appointee must have.

Ms. Weizer applauded the notion that not all members of the ARB had to be architects, adding that there may be residents with planning experience in the city who have broader and different perspectives, but do understand and respect historical differences in construction, etc.

Mrs. Sax asked for clarification from Mr. McConville regarding whether it is a conflict of interest or a matter of preference working for the same firm. Mr. McConville noted that there is no economic conflict; whether Mr. Rach might have a conflict would be something needing to be reviewed case-by-case. Most of the work done by the ARB is confined and does not come to Council for review.

Ms. Marshall expressed concern about communication and respect - remaining professional in the meeting. She felt that someone without a vested interest in the community should not make architectural decisions, and that if there are viable candidates, they should be considered.

Mayor Brennan made it clear that he will not appoint someone [to the ARB] who is a member of a firm of a sitting Council person.

Mrs. Sax expressed concern that a perceived preference rather than one based on a legal/ethical actual conflict is dangerous, and she cannot support that determination.

Since there was no motion on Ordinance 2023-40 Ordinance Amending Codified Ordinance Section 1246.01 Entitled “General Provisions” for the Purpose of Eliminating the Residency Requirement for Membership on the Architectural Review Board, and Declaring an Emergency (on Emergency), Mayor Brennan stated that he considers this on first reading.

D. Motion to Approve Accepting Grant Award from Ohio Arts Council for the 2023 Fall Fest in the Amount of \$4,444.00.

Mrs. Deanna Bremer-Fisher mentioned that Fall Fest began in 2019, and that this year’s event will be on October 15 from noon to 5:00 p.m. at Walter Stinson Park. This grant from the Ohio Arts Council will enable more offerings from the arts community for the event which brings our diverse community together, boosts civic pride and enhances quality of life.

Mrs. Sax asked for clarification about language in the addendum referring to a state-sponsored institution of higher education and an agent of the Ohio Arts Council. She stated that we need to be sure that the terms are being met before accepting the grant and avoid the possibility of having to return same. Mrs. Bremer-Fisher affirmed that the City is eligible, otherwise they would not have offered the grant. Mrs. Sax suggested that it be double checked to be sure.

Motion by Ms. Weizer, second by Mr. King to approve the Motion to Approve Accepting Grant Award from Ohio Arts Council for the 2023 Fall Fest in the Amount of \$4,444.00. On roll call, all vote “aye”.

E. Motion to Approve Price Quote from Starfish Computer Corp. for Emergency Support and Service from August 1, 2023 through August 31, 2023 in an amount not to exceed \$5,550.00.

Mayor Brennan stated that this is the monthly quote that the City has with Starfish, and that a managed service agreement with them is being worked on. The latest draft with changes proposed from the city has been submitted to Starfish and we are waiting on the CEO to get back to us regarding the proposed changes, most of which are minor. Mr. McConville stated that the contract contains indemnification language which would require the city to indemnify Starfish and that is something he didn’t feel the city should agree to. He stated that in Ohio, municipalities aren’t permitted to indemnify third parties unless funds are appropriated to support same, which would mean Council would have to encumber and appropriate funds, tying up taxpayer’s money. Mayor Brennan noted that another change in the proposed contract is a reduction of the annual rate of interest from 5% to 2.5% and other minor changes.

Ms. Weizer stated that if there are changes, she would like to see them to compare the findings of the technology committee. Mayor Brennan stated that those changes aren't being considered tonight and the hope is to bring back the negotiated contract to Council for final approval at the first meeting in September. Mr. McConville reported that the contract is lengthy, and the delay is partly on him. He stated that we are waiting for Starfish to respond at this point, and that the draft received from them is redlined with his comments and he is happy to share.

Mrs. Weiss stated that this was a priority in May and that a few years have been spent bidding RFQs and RFPs. She pointed out that it is August 15 now; the quote ended July 31, so they are working without a contract. She stated that the city can't wait until the middle of a month to re-approve something like this; it creates a great liability on both sides.

Motion by Mr. King, second by Mrs. Weiss to Approve Price Quote from Starfish Computer Corp. for Emergency Support and Service from August 1, 2023 through August 31, 2023 in an amount not to exceed \$5,550.00. On roll call, all voted "aye"

F. Motion to Approve Fire Department Seeking Bids for 2023-2024 NFPA Firefighter Occupational Medical Examinations.

Fire Chief Perko stated that on December 21, 2022, Council approved a motion to accept an American Rescue Plan Act (ARPA) first-responder grant. Information regarding same was distributed at that time. Chief Perko provided the two newest members of Council with the information. He detailed the grants applied for through various professional fire associations, pointing out that a joint wellness initiative has been created which includes four main components of fitness, medical, rehabilitation and behavioral/mental health. When applying for the ARPA fund, the program was based on existing models. It was pointed out that funding has been unavailable from the city to provide ongoing medical examinations for the firefighters. This \$204,000 award received from ARPA will facilitate the seeking of bids for NFPA compliant wellness medical exams for firefighters. It was noted that this is over the Mayor's spending authority.

Motion by Ms. Weizer, second by Mrs. Sax, to approve the Motion to Approve Fire Department Seeking Bids for 2023-2024 NFPA Firefighter Occupational Medical Examinations. On roll call, all voted "aye".

G. Motion to Authorize the Mayor to Enter Engagement and Sign Engagement Letter with Bricker & Graydon for Representation of the City in the University Square Real Estate Holdings LLC bankruptcy filing.

Mayor Brennan reported that University Square Real Estate Holdings LLC filed for Chapter 11 bankruptcy last month. Because of the nature of the filing and the hearings that would be held immediately, it was important that the City participate immediately and find legal representation. Since bankruptcy is a specialized area, Mr. McConville believed it appropriate to seek outside counsel rather than he or someone in his firm handling this. Mayor Brennan stated that he, Mr. McConville and Mrs. Drucker, Economic Development director, interviewed the firm Bricker and Graydon. It was noted that Mike Debbeler of the firm is an experienced bankruptcy practitioner who has represented cities in similar situations. Mayor Brennan stated that Bricker & Graydon was considered first because they had represented the City previously regarding the development agreement on University Square. Mayor Brennan stated that this proposed engagement letter deals with the bankruptcy issue only and is a limited engagement for this specialized purpose only - not an array of other matters.

Mr. McConville added that the interview with the firm went well and Mr. Debbeler with 30 years of bankruptcy was impressive, sensitive to the needs of the city and a quick-study regarding the convoluted history regarding the property.

Mrs. Weiss was troubled by the events, citing the following issues. She pointed out that an attorney should never be engaged without an engagement letter. When she suggested having a special meeting to consider the circumstances, she was ignored. She mentioned that there is a professional services ordinance, and while Mr. McConville explained this is a sole source (Bricker and Graydon) which she understood, there are layers that needed to be explained. She noted that this

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is the second time in one meeting that engagement with professional services is being done without contracts. She noted that this particular one is worrisome; there is liability for the city as well as the firm. Mrs. Weiss stated that this is sloppy work and is putting the city at great risk,

In response to Mr. King's question regarding rates listed which end December 31, 2023, Mayor Brennan responded that Bricker and Graydon typically would send a letter indicating whether or not they intend to raise rates.

Mr. McConville answered Mrs. Weiss' question regarding whether or not this can be changed from a motion to an ordinance to ensure that it is signed in the appropriate timeframe, stating that it cannot be done this evening, but it can be brought as an ordinance at another meeting. Mrs. Weiss reminded that she had indicated in the past all contracts need to be done by an ordinance because of a history of unsigned contracts in a timely manner. Mr. McConville stated that passing the motion this evening doesn't stop Council from passing an ordinance; both can be done. He remarked that Mr. Debbeler has provided services and he believes that those services are still within the Mayor's spending authority at this time.

Mayor Brennan was unaware of what Mrs. Weiss referred to regarding contracts sitting on desks for months, but noted that if this is authorized this evening, he will be signing it and returning it to Bricker and Graydon tomorrow

Motion by Mr. King, second by Ms. Weizer to approve the Motion to Authorize the Mayor to Enter Engagement and Sign Engagement Letter with Bricker & Graydon for Representation of the City in the University Square Real Estate Holdings LLC bankruptcy filing.

Ms. Weizer asked about whether there would be a conflict with Bricker and Graydon if the agreement is signed now, and then an ordinance is prepared for the next Council meeting. She also asked about language that appeared to be "boilerplate". Mr. McConville stated that the motion is going to authorize the document; he added that he didn't think there is any substantive change that is being sought in the engagement letter, but that it should be clarified. Regarding the language Ms. Weizer referred to, he noted that he interpreted it to be boiler plate and didn't believe there is an intent to usurp Council power. Mr. McConville stated that the Administration would have to return to Council for approval regarding any services provided by the firm outside of the bankruptcy matter. Mayor Brennan agreed and pointed out that in spite of the fact that Bricker was engaged in 2019 regarding the University Square development agreement, an entirely new letter was sought even though it related to the same project.

Ms. Weizer asked Mr. King if he would accept an amendment to the Motion to limit the motion only to bankruptcy. Mr. King agreed to do so.

Conversation continued regarding calling special meetings, the authority of both Council and two members of Council to do so; contracts being signed or not, the timeline of when the letter was actually received, etc.

Regarding the motion, Mrs. Sax made it clear that not participating in the motion was not negative against the engagement letter, but she expressed concern that there was not an opportunity to review the matter. She would appreciate responsiveness and courtesy in order to do due diligence in the best interest of the residents. She hoped that this would not happen again.

Mr. McConville responded to Ms. Marshall's question about whether or not if the rates were changed if Council would be notified. Mr. McConville stated that if the rates were changed or increased, the matter does come back to Council.

Ms. Weizer requested that information be provided to Council in a timely manner so that there is a chance to review and/or consult the Mayor prior to having matters played out in the meetings where things become misinterpreted.

Mrs. Weiss emphasized that she is in support of the engagement letter; she would like to have it in ordinance form to ensure that it will be signed. Regarding contracts, Mayor Brennan stated that the zoning contract was not immediately implemented because of pending litigation concerns.

Motion by Ms. Weizer to call the question. On roll call, the following voted “aye”: Mr. King, Mrs. Sax, Mr. Rach, Ms. Marshall, and Ms. Weizer. Mrs. Weiss voted “nay”.

Motion by Mr. King, second by Ms. Weizer to approve the Motion to Authorize the Mayor to Enter Engagement and Sign Engagement Letter with Bricker & Graydon for Representation of the City in the University Square Real Estate Holdings LLC bankruptcy filing; *this action is limited to the bankruptcy matter only.*

Point of order:

Mrs. Sax requested clarification; she asked if by voting for this implies that an ordinance is out of the question?

Mr. McConville stated that if authorized to draft an ordinance, he will do so and explained that the vote on the ordinance is purely ministerial and not going to operate to withdraw the Mayor’s authority that is provided by the motion to sign the contract; he doesn’t have to wait for an ordinance because the motion authorizes entry into the contract.

On roll call on the motion to approve the Motion, AS AMENDED, to Authorize the Mayor to Enter Engagement and Sign Engagement Letter with Bricker & Graydon for Representation of the City in the University Square Real Estate Holdings LLC bankruptcy filing; *this action is limited to the bankruptcy matter only*, the following voted “aye”: Mr. King, Mrs. Sax, Ms. Marshall, and Ms. Weizer. Mrs. Weiss voted “nay”; Mr. Rach abstained.

The motion carried.

H. Motion to Enter into Executive Session for Personnel Matters (ADDED ITEM)

Mayor Brennan stated that labor counsel is here to update labor negotiations in Executive Session.

Motion by Mrs. Weiss, second by Mr. Rach to enter into Executive Session. On roll call, all voted “aye”.

Council returned to regular session after the Executive Session.

I. Adjournment

Motion by Mrs. Weiss, second by Ms. Weizer to adjourn the meeting. On roll call, all voted “aye”.

Jeune Drayton, Assistant Clerk of Council

Michael Dylan Brennan, Mayor
