

Regular/Public

May 18, 2009

President Baker called the regular meeting to order. Pastor David Kearns-Preston of First Presbyterian Church offered the prayer. The Pledge was recited by all.

Roll call: Shupp, Miller, Landaw, Vance, Aspiras, Corfman and Leathers were present.

Corfman moved and Aspiras seconded that the minutes of the May 4, 2009 public hearing and regular meeting be approved. Roll call vote. Ayes all. Motion carried.

**Public Comment:** None.

**Standing Committee Reports:**

A. Finance – Mr. Miller reminded Council of the 2010 Budget schedule. June 15th is the first reading and public hearing. June 22nd will be the special meeting for the second reading and a workshop. July 6th will be the third reading of the 2010 budget. I also want to congratulate the class of 2009.

B. Utilities – Mr. Landaw reported the Public Utility Board will meet on Tuesday, May 26th at 6:30 p.m.

C. Health & Safety – Mr. Corfman had no report, but scheduled a Health & Safety Committee meeting for June 15th at 6:45 p.m. to discuss urban hunting.

D. Parks and Recreation – Mr. Aspiras reported the Orr Pool will open on Friday, May 29th at 1:00 p.m. for open swim and just to let the public know there will be pre-sale season passes available to purchase on Wednesday, May 27th, from 4-6 p.m. I would also like to announce a committee meeting for Parks & Rec on June 1st just prior to our Council meeting. We will be discussing with Mr. Wheeler the potential of showing movies in Orr Park for the summer.

E. Transportation – Mr. Shupp had no report.

F. Planning – Mr. Vance had no report.

G. Ordinance & Personnel – Ms. Leathers had no report.

**Special Committee Reports:** None.

**Administrative Reports:**

A. Mayor - Mayor Handwerk reported he attended the Ohio Vietnam Veterans Memorial service yesterday (May 3rd) in Clinton. It was very well done and there had to be several thousand people there. It was very well attended. Everything is not completed yet, so it is kind of a work in progress, but they had a very nice service yesterday and as I said, I am sure Clinton's population yesterday at least doubled.

B. Safety Service Director- Director Wheeler had no report.

C. Utilities Director – Director Preising had no report.

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D. Finance Director – Director Strimlan distributed the Fund Balance Report for the period ending April 30, 2009 was distributed prior to tonight’s meeting. Miller moved and Aspiras seconded to approve the report subject to audit. Roll call vote. Ayes all. Motion carried.

E. Law Director - Director Lutz had no report.

F. President of Council – President Baker congratulated our upcoming Seniors also. It is an important time in their life and something else, there is a lot of college graduations that have been going on the last few weeks and in the next few. All of these people need to be congratulated. They have accomplished a lot for the high school kids over the last 12 years; for the college kids anywhere from a few years to 5, 6, 7 years. Who knows how long some of them end up being students. I would like to remind everyone that this coming Monday is Memorial Day. Remember those people that gallantly served and died for us over many, many year. Memorial Day is an important holiday; don’t just make it a day to go have a picnic.

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**Old Business:**

Leathers: Tonight's old business is consideration of the William Arnold Application for Placement of Farmland in an Agricultural District.

Baker: Does anyone have any questions of Mr. Lutz? Or Mr. Lutz do you have a statement to make?

Lutz: No, I resent out the memo that I had sent out to Council previously that I believe answers the question that Council may have had regarding the authority to modify the length of the designation. If that is in the statute, it is allowed to be modified. Basically the statute says in rejecting or modifying an application to place land in an agricultural district Council shall demonstrate that the rejection or modification is necessary to prevent a substantial adverse affect on the provision of municipal services within a municipal corporation; efficient use of land within a municipal corporation; the orderly growth and development of the municipal corporation; or the public health, safety, or welfare. So under that authority, the Council is certainly allowed to either reject or modify the length that you are going to grant for the designation.

Miller: The appearance of the property doesn't look that much different to me. I drove by there on the way here. Do we have any kind of, like I know the last time there were photos showing what the appearance of the property was at the time, do we have anything now that shows us a comparison to what it looks like between this time frame?

Wheeler: We did take photos upon the satisfactory completion of the task that Mrs. Jewell had designated for them to do in order to drop the civil suite. But we have not taken any since. We have monitored that property and as you say, we really haven't noticed any significant differences in the accumulation of the various farm equipment there.

Miller: So it would be fair to say, in your opinion, it hasn't changed much either?

Wheeler: No. I would agree with you.

Landaw: I am in favor of rejecting his request, I am willing to maybe go one year to allow him another one year, but I really don't want to go the full five years. I would support rejecting his request or see what he can get done in another year.

Lutz: I would just caution Council that the evidence that you have to consider for granting, modifying, or rejecting the application has to be from the public hearing that took place while I was gone. If Mr. Wheeler believes that it is his opinion that it hasn't changed, that is not really evidence you can consider. It has to come from that public hearing that took place. I just want to make that clear, that you don't base it on what Mr. Wheeler just said. Whatever the evidence was that took place at the public hearing while I was gone.

Corfman: If rejected, when is he allowed to re-apply?

Lutz: He can apply next year again. I don't know if he could apply tomorrow, I would have to look at the statute. Certainly he can apply again the following year.

Corfman: There is no period of time? It is not like five years?

Lutz: No. That is what happened last time, he was granted one year. Prior to being rejected last year, it was granted for one year. So we did this before.

Peppard: If it is rejected, he can file an appeal within 30 days.

Lutz: That is different though. They are asking about re-applying to Council. He can appeal your decision. He would appeal that to the Common Pleas Court and if the public hearing was done correctly, the court is limited to just briefs that are presented by the City and by Mr. Arnold. If, for example, witnesses weren't put under oath or he wasn't allowed to present some sort of evidence or something was not done right, then a whole new hearing is presented to the judge. As far as I know the public hearing was done correctly. I wasn't here, but I made sure people knew what the requirements are.

Vance: My understanding is that we are not to only consider the appearance of the property, but the use of the equipment there as well. It is the contention I believe of the Administration that this meets the requirements/definition of a junk yard.

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Lutz: That is a little different. That goes more towards the criminal charge that was brought by the State on our Zoning Code. Really it is; it comes out of that paragraph I read earlier. It has to come in by the appearance or the use of the property – what is happening with it. The fact that he is operating a junk yard, meaning he is selling pieces or parts for example off the stuff he has there to others, is illegal, but I don't know if it necessarily affects what you consider for the agricultural designation. That is a different matter.

Corfman moved and Aspiras seconded the application be rejected.

Roll call vote. Ayes all. Motion carried.

**New Business:**

**ORDINANCE 19-09**

Leathers moved and Landaw seconded that Ordinance M-09, an ordinance replacing Chapter 1303 of the Codified Ordinances of the City of Orrville, Ohio, regarding flood damage prevention, be placed on first reading. Roll call vote. Ayes all. Motion carried.

Endsley: I just wanted to give you a little bit of background information because we haven't really talked a lot about this legislation. FEMA has updated our FIRM maps with are the Flood Insurance Rate Maps that show our special hazard areas. They have updated those and in accordance with that they took a look at everybody's flood plain legislation to make sure it met the standards that they would like us to have. So we are required as a condition of continued eligibility in the flood insurance program to adopt their minimum regulations and so that is what we are looking at. These are the minimum regulations that come down from the Ohio Department of Natural Resources and from FEMA. We basically took them directly from the State's website. We have been working with a representative from ODNR. This would go to three readings and it could be passed on June 15th. Our deadline is August 18th, so that gives us plenty of time to get them passed; to get them to the State level; and get the approval from the State level. They are a little more lengthy than what we had in the past, but basically it was just clarifying policies and procedures of how to handle those areas if someone where to build on a flood plain. Basically the areas of flood plains on our maps did not change significantly and we have very few properties that build on the flood plain, but if they do it is a little more clear how we handle those going forward.

Aspiras: Does this ordinance affect current structures.

Endsley: It would not affect current structures that are there now unless they made changes such as an add-on to their building. Then they would need to follow the new set of rules, but what is there now we can not go back and mandate that they follow these rules.

Wheeler: I request Council schedule a public hearing regarding this ordinance for June 1st.

Leathers moved and Miller seconded motion. Roll call vote. Ayes all. Motion carried.

**ORDINANCE N-09**

Leathers moved and Corfman seconded the Ordinance N-09, an ordinance vacating a portion of Strawberry Lane, a portion of Clark Street, a portion of North Walnut Street, a portion of Arch Street, and two alleys in the City of Orrville, Ohio, be placed on first reading. Roll call vote. Ayes all. Motion carried.

Baker: There was a public hearing at our last meeting concerning this. Any further discussion for this evening.

Handwerk: At our last meeting Mr. Shupp brought up a very legitimate concern about what we would do with Trucking & Grading's truck traffic and also Smucker's during the time that we would possibly be doing the truck route construction. Having talked to Engineering Associates who has been doing the engineering work so far on the truck route possibilities, it was mentioned that it would probably be about 13 days when they are tying those two streets together that it would be blocked, but he said what they would do is just create a little side route actually over on to Smucker's property, so it would be to the North of Orr Street, so trucks could get through there for that two week period of time while they are connecting those. It really shouldn't be a problem.

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Lutz: To back up a minute to old business, I think Council in rejecting Mr. Arnold's application has to articulate why they are doing so based on the evidence presented at public hearing. I just need somebody to state the basis for the rejection based on that evidence. Again under the section of the statute I read to you earlier, for example, if you believe you are doing it because it affects the efficient use of land within a municipal corporation; the orderly growth and development of the municipal corporation; or the public health, safety, or welfare. If he is going to appeal this, we need to have something in the record to show the court why Council has rejected it based on what took place at that public hearing.

Corfman: It was my motion so it would be for the public health, safety, or welfare based on several said they admitted it was cluttered with unused equipment, inoperable equipment, and the property is in poor condition.

Aspiras: One of the farmers that testified also admitted the property did need cleaning up. He also mentioned there was inoperable equipment there. It was one of the individuals that Mr. Arnold called forward.

Baker: Would this be considered an amendment to the motion to reject?

Lutz: I don't think so. It is just that Council has to articulate the basis for rejecting the application. Basically what I am hearing is because the appearance is bad, I mean he still has a lot of junked equipment there. Some may be operable, some may not be. Based on the evidence presented at that hearing the property hasn't improved to the point where Council is satisfied.

Vance: My reasoning is that an illegal junkyard is not an efficient use of the land.

Miller: The way you articulated it is the way I voted.

Peppard: So based on the evidence at public hearing on May 18, 2009 the rejection is necessary to prevent substantial, adverse effect on the efficient use of land within a municipal corporation, the orderly growth and development of the municipal corporation, and/or public health safety, or welfare.

**Good of the Order:**

Handwerk: I would just like to remind everyone with the Memorial Day holiday our trash pickup will be delayed one day. Also, our Memorial Day service begins with the procession at 9:30 on Monday morning and once it reaches the cemetery it will be approximately 10:00 when the services begin at the cemetery.

Corfman moved and Leathers seconded that the council meeting be adjourned. Ayes all. Motion carried. Council was adjourned at 7:57 p.m.

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Tamra Peppard, Clerk of Council

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Date

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Lyle Baker, President of Council