

RECORD OF PROCEEDINGS

Minutes of

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10143

Held

Thursday, July 21, 2011

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ITEM 1: CALL TO ORDER: Mayor Flaute called the Riverside, Ohio City Council Meeting to order at 6:00 p.m. at the Riverside Municipal Center located at 1791 Harshman Road, Riverside, Ohio.

ITEM 2: ROLL CALL: Council attendance was as follows: Ms. Campbell, present; Mr. Denning, present; Mr. Fullenkamp, present; Mrs. Reynolds, present; Mr. Schock, present; Deputy Mayor Smith, absent; and Mayor Flaute, present.

Staff present was as follows: Bryan Chodkowski, City Manager; Bob Murray, Planning and Economic Development; Mitch Miller, Service Department; Mark Reiss, Police Department; Bob Turner, Fire Department; and Bob Gillian, Finance Department.

ITEM 3: EXCUSE ABSENT MEMBERS: A motion was made by Mr. Denning to excuse absent member Deputy Mayor Smith. Ms. Campbell seconded the motion. A roll call vote was as follows: Mr. Denning, no; Ms. Campbell, yes; Mr. Fullenkamp, no; Mrs. Reynolds, no; Mr. Schock, no; and Mayor Flaute, no. **Motion failed.**

Deputy Mayor Smith arrived at 6:05 p.m.

ITEM 4: ADDITIONS OR CORRECTIONS TO AGENDA: The agenda was revised prior to the meeting to add Item 11, a Presentation by Jerry Ellender and Marilyn Steiner from the Mad River Local School District and to remove Item 20, Executive Session.

Mr. Schock said he had the understanding that the agenda would be kept light while council reviews the proposed code rewrite and some additional items have been added. Mr. Denning said these two sections are light. Mr. Schock said he was just afraid this might carry on and on but if everyone feels comfortable with it then he does too. Mayor Flaute said the meeting following this looks like it will be short but one never knows. Mr. Schock said he thought we should keep it in mind and leave lots of room for questions as we review the proposed code.

ITEM 5: APPROVAL OF AGENDA: A motion was made by Mr. Denning to approve the agenda as revised. Mrs. Reynolds seconded the motion. All were in favor; none were opposed. **Motion passed.**

ITEM 6: WORK SESSION ITEMS:

- a. Board and Commission Interviews

Mayor Flaute welcomed the applicants and said he was glad they had volunteered to be part of the government process. He said they will find time spent on the boards is very interesting.

Mrs. Julie Denning interviewed for the open position on the Planning Commission.

Mr. Donald McKenzie interviewed for the open position on the Parks & Recreation Commission.

Mayor Flaute reviewed two other applications that were received: Ms. Erin Procniar, who was not able to attend tonight's meeting but is interested in the Park & Recreation Commission; and Mr. Jerry Richardson, who is interested in the Personnel Appeals Board or the Board of Zoning Appeals.

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Council asked for legislation to be brought forward to appoint Julie Denning to the Planning Commission and to appoint Donald McKenzie to the Parks & Recreation Commission. Mayor Flaute said he was sorry Ms. Proconiar couldn't attend tonight but hopefully she will be willing to stay on board with us.

Mrs. Reynolds asked if there were any terms ending soon on the boards and commissions. Mrs. Brane said not until 2012.

b. Discussion: Proposed Zoning Ordinance
Article I – General Provisions
Article III - Administration

Mr. Chodkowski said these two sections of the code are relatively technical in their makeup and their purpose; the first article deals with transitioning from the existing code to the proposed code, and the third article delves into the administration of the code defining who is responsible for what. He said a good portion of article three comes from the City Charter, the Administrative Code, or from the Ohio Revised Code. He said there are also some issues addressing pre-existing, non-conformities which when created by a change in the code, you have to still allow for the owner to utilize their property.

Deputy Mayor Smith said you mentioned that an owner whose parcel is rezoned can still use the property as it was zoned prior to the change; if the property is sold does it have to conform to the new code. Mr. Chodkowski said not necessarily; the use has to be abandoned for six months. Deputy Mayor Smith said what about a vacant lot. Mr. Chodkowski said in the event of a vacant lot the owner is vested permitted right of whatever zoning applies.

Mr. Schock said his property and home are zoned industrial. Mr. Chodkowski said correct; Mr. Schock resides in a pre-existing legal non-conformity. Mayor Flaute asked what would happen if Mr. Schock's house burned down. Mr. Chodkowski said specific to Mr. Schock's example, he would be allowed to rebuild provided the reconstruction of his home does not enlarge the non-conformity. He said he could build another single family home that would have to be approximately the same square footage and reasonably comply with the same setbacks he had at the time the home burnt down. Mayor Flaute asked if he could buy the house next door, tear it down, and build a larger house on the two lots. Mr. Chodkowski said no but he could apply for a rezoning.

Mr. Denning asked if Mr. Schock decided to move and he sold the lot, would the new owner be allowed to build a house on it. Mr. Chodkowski said that is a technical situation but if construction or the beginning of construction occurred within six months they could. He added he would have to review that section of the code; it's either six months or twelve months. Mr. Denning said if the construction didn't begin during the allotted time then they would have to apply for a rezoning or build an industrial use and Mr. Chodkowski said yes.

Mrs. Reynolds said we are going to consider it abandonment of the property if they don't start to rebuild in twelve months. Mr. Chodkowski said the forfeiture applies to the use. Mrs. Reynolds said right and if he didn't start to rebuild a house within the 12 months then the zoning will fall in line with the industrial zoning. Mr. Chodkowski said yes.

Mrs. Reynolds said on page 3-3, item B-6, regarding decline to follow recommendation; is that finality of decision from our Charter – does that play a part in this. Mr. Chodkowski said this provision is in response to an administrative amendment Council made 2 years ago.

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Mrs. Reynolds said under item B-7, referring to the chart showing the appeals process; can you explain Council's role. Mr. Chodkowski said there are only a few: Development Plan - this is a planned unit development that requires a developer to come to the Council level to negotiate specific terms for their use and if for whatever reason the developer was turned down and he felt he had a unique project, he has the right to appeal to the Court of Common Pleas.

Mrs. Reynolds said on page 3-6, under item B-2-b, regarding certifications of applications it states "incomplete applications will not be acknowledged". She asked for an explanation of the statement. Mr. Chodkowski cited an example of an application for a shed and said it requires a site sketch plan; it doesn't have to be fancy but requires measurements so we have a concept of what you are proposing to do. He said some people put a rectangle on a piece of paper that says "shed", 10 feet by 20 feet and submit that. He said we tell people that is an incomplete application. Mr. Fullenkamp asked if we gave people direction on what was needed and Mr. Chodkowski said yes; there is an example with the application. He said we try to catch the incomplete applications up front when the fee is paid. Mr. Murray said by legislation we have to turn those applications within 10 days so the clock doesn't start until the application is complete.

Mayor Flaute asked if we did all that here or if they had to go to the county. Mr. Chodkowski said sometimes they have to go to the county, if the structure goes beyond so many square feet then you have to get a building permit from the county. He said a county permit is required for a shed of 200+ square feet or anytime you are attaching something to your home. Mayor Flaute asked if that was mentioned in the proposed code. Mr. Chodkowski said yes; first you receive a certificate of zoning compliance from us then you take that down to the county to review your plan and approve it for construction.

Mrs. Reynolds said on page 3-8, item E - could she get an example. Mr. Chodkowski said that is a substitution of a non-conforming use; we try to allow for degradation in intensity when it comes to use. He gave an example of a car repair shop becoming just a car detailing shop. He said technically it might not be in compliance with the zoning district but because we are declining the intensity of the use this provision would allow it.

Ms. Campbell said on page 3-8, item G, regarding combining of lots - is that called "taking". Mr. Chodkowski said no, in this instance, for example- if I own three lots all in a row and they are each 40 feet wide; if my house sits on one lot and my garage sits on the second lot, I could not sell off the vacant yard to someone who in turn would say they have a vacant lot of record and you have to let me build a house on it. He said this states that all three of the lots count as one lot all together; however, if I owned only the 40 foot wide lot and I didn't have a house on it and then you change the code, if I decide to put a house on it, you have to allow it. Ms. Campbell asked what if there is a vacant lot next to you that you don't own but it's unattended and you take care of it. Mr. Chodkowski said it doesn't become your lot; it still belongs to whoever the owner is. Ms. Campbell asked how many lots we had like that. Mr. Chodkowski said thousands; all the lots in Riverside Terrace are 45 feet wide - the current code and the proposed code both call for a minimum of 60 foot lots. He said all those lots are non-conforming and a house will sit on 2 lots and one person will own 3 or 4 lots. He said the Floral Park area is much like that too; 100+ homes on 300+ lots.

Ms. Campbell said the review schedule talks about a public hearing; will there be 2 separate hearings - one on the language and one on the map. Mr. Chodkowski said yes.

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Deputy Mayor Smith said in the acronyms it mentions the TRC, Technical Review Committee, do we have such a committee. Mr. Chodkowski said the same function happens but it happens independently; copies go to Mr. Miller and Chief Turner for review but they do not collectively meet. Mr. Murray said we do try to put as many people in a room as possible to review a plan; we do it informally but we saw in Centerville's code that they formalized that committee which seemed like a great idea to us.

Mr. Fullenkamp said on page 3-9, item I-2, on non-conforming structures and he is thinking about Mr. Schock's situation; it states "should such non-conforming structure be destroyed by any means to the extent of more than 50 percent it shall not be reconstructed". He asked if it could be replaced with the same non-conformity or could it not be replaced at all; he's just not clear on that. Mr. Chodkowski said he could have been wrong in his initial assessment. Mr. Denning said this is talking about structures and Mr. Schock's structure conforms; this is specific to structures and not to land use.

Mr. Schock said there is a perfect example for this; if a house in the flood plain is destroyed by more than 50%, it has to be rebuilt with an increased elevation.

Mr. Fullenkamp said so the difference is between the use and the structure. Mr. Chodkowski said correct. He said in Mr. Schock's instance if the side yard setback is 10 feet and Mr. Schock's house is only 5 feet from the line, he could still rebuild it but it would have to be moved so the setbacks are met.

Mrs. Reynolds asked if this could be construed by anyone looking to rebuild as an avenue when in fact it's not. She asked if it could be cleaned up a little to make sure there is no confusion. Mr. Denning suggested bold face "uses of land" and "structures". Mr. Chodkowski asked if that was a general format issue council has noticed when reading through the proposed code.

Mr. Schock suggested they keep that in mind as they go through this. Mayor Flaute asked the clerk to keep a running total on what needed to be put in bold. Mr. Denning said he thought it would be a formatting issue. Mr. Chodkowski said he thought this could be split so there is a section for non-conforming uses and a section for non-conforming structures then we will just renumber everything.

Mayor Flaute said on page 1-2, referring back to the 2005 Comprehensive Plan, that seems pretty much dated. He asked how often we updated the comprehensive plan. Mr. Chodkowski said in most instances, from his previous experience, comprehensive plans are designed to be good for 20 years. He said their importance often relates to grants at the state and federal level for development.

Mayor Flaute said the code begins its writing in Article I referring to the City of Riverside but then there are many references that just say city; shouldn't that be consistent with the complete City of Riverside reference. Mr. Chodkowski said he didn't think that was an issue; a lot of the language in Article I is very technical and as we progress through the code the "city" becomes generalized from the standpoint that it can mean several different things which is why you see the change. Mayor Flaute said he guesses that is okay but he would like to see City of Riverside spelled out as it was in the beginning so it's consistent.

Mayor Flaute said on page 3-10, item L, is that what we talk about when we talk about the grandfather clause. Mr. Chodkowski said there is no grandfather clause; you are either a pre-existing legal non-conformity or you are an illegal non-conformity. Mayor Flaute asked for an explanation of item L, repairs and maintenance. Mr. Chodkowski said the best example is signs; this section says you can paint the sign, if the wiring

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goes out you can rewire the sign – that’s all legal; but you can’t make the sign taller, you can’t keep the same size and move it, you can’t take the existing sign and add whirligigs to it, and etc. Mayor Flaute asked about structures. Mr. Chodkowski said that would be referring to the home that is too close to the lot line or a shed that is too close to the rear lot line or a shed that is larger than what we allow under the code; you can paint it, you can reroof it, you can side it, but you can’t add on to it or move it around on the property – you can’t aggravate the non-conformity.

Mayor Flaute said since you brought up signs, when we get to signs – say we don’t like the idea that you can’t replace a big sign with another big sign, will we have to refer back to this. He said he’s worried that if we change something deeper into the code that we might forget something at the beginning that will effect what we want changed. Mr. Chodkowski said there is language about conflict that already exists to deal with those issues – page 1-3; the most restrictive provision of the code will apply when there is a conflict.

Mayor Flaute said on page 3-11, item D, regarding exemptions to governmental entities carrying out a governmental function – does that include signs for someone who is running for office. He said that is a government function. Mr. Denning said that is a political function. Mr. Chodkowski said an example is when the city has to vacate this property for Route 4, we discussed relocating the Service Department to the Lorella Pond property which is zoned residential. He said we would be creating a service yard which would typically not be allowed in that district but since we are a governmental entity we would receive special disposition – we can go where we need to go or where we have to go regardless of the zoning because we are the government and its our job to provide services to the health, safety and well-being of the general public. Mayor Flaute said what about the state and federal governments. Mr. Chodkowski said they have that right too.

Mayor Flaute said on page 3-11, item B-1, it states that a code interpretation shall be made in writing to the Director of Planning and Economic Development; he asked if that should say the “City of Riverside” Director of Planning and Economic Development to make it a little clearer.

Mayor Flaute said he noticed we skipped Articles II and IV and asked if there was any reason for that. Mr. Chodkowski said it is a format issue; everything is in odd numbers so that in the event you want to add provisions to the code later, you have that ability and can maintain continuity.

Deputy Mayor Smith said on page 1-3, Section 1.09, regarding the ordinance effective date states “uses or structures not lawful under the zoning regulations for Riverside, Ohio or for Montgomery County, Ohio as applicable, and any amendments thereof, in effect prior to the above stated effective date, are considered to be unlawful under this ordinance, unless they now meet all requirements of this ordinance”. He said so what’s non-conforming now and is okay, when this ordinance becomes law it’s out of sync. Mr. Chodkowski said for example, a legal pre-existing non-conformity that is in B-4 zoning district now will become a B-2 zoning district under the new code; that B-4 use is still a pre-existing non-conformity under the new code. He said if he bought the property next door which is currently being used for storage and he decided to open a business without all the proper permits that would be illegal; under the new code it would be a B-2 even though he started under the old code at B-4; still an illegal use. He said if he bought the property and started using it as a garage to the general public illegally and the property is rezoned to industrial then the use would become legal. Deputy Mayor Smith said so whatever is illegal now will be illegal when the new code becomes effective. Mr. Chodkowski said unless we rezone it. Deputy Mayor Smith said there’s probably very few of those. Mr. Chodkowski agreed and said we will create more non-conformities than conformities.

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An audience member asked how the new code would deal with a legal plat of about 20 houses that has deed restrictions. Mr. Chodkowski asked if the plat has covenants that were filed on the deed at the time of purchase. The audience member said yes. Mr. Chodkowski said the covenants will still be in affect and those would be legal lots of non-conformity; in other words, they are illegal under the current code but when they were created, they were legal and therefore they continue with the vested property right. The audience member asked why the lots would be illegal under the current code. Mr. Chodkowski said they might; it depends on how wide and deep they are. The audience member said the plat restriction says you must not reduce the lot size. Mr. Chodkowski said we are not physically reducing the lot size; the code is designed to apply to new construction. The audience member said if somebody comes in and buys one of our houses and decides to split the lot and sell part of it, would we come to the city for support or would he have to go somewhere else. Mr. Chodkowski said it depends on what is in the covenant and to whom the covenant is with. Deputy Mayor Smith asked if that was a deed restriction. The audience member said yes. Mayor Flaute said he thought they shouldn't have an issue with that and Deputy Mayor Smith said the covenant should hold up. Mr. Chodkowski said it would be the responsibility of the county to catch; we would review the application to the extent that the lot had been surveyed and that the proposed subdivision meets all our requirements. He said then that is taken down to be filed at the county and it would be the responsibility of the County Auditor's office to catch that. The audience member said when we come for help, sometime we get it and sometimes we don't. Mayor Flaute said we try our best.

Mayor Flaute asked Council if there was anything in Article I and Article III that they felt needed changing at this time. Being none, Mayor Flaute said to keep track and if we need to call a special meeting, we can.

c. Discussion: Internet Cafes

Mr. Chodkowski said the matter of internet cafes is they are electronic gaming machines which may or may not be construed as gambling devices depending on who you talk to. He said because of that, they have taken a foothold in our area - Harrison Township, Centerville, Miamisburg, Springboro, Springfield, etc. He said several communities have been approached regarding the establishment of these internet cafes and in some of these communities they have taken hold.

Mr. Chodkowski said we don't have anything specific within our zoning code which addresses internet cafes; previously we have looked at these as gambling institutions and that is prohibited under Chapter 5 of our general offenses code. He said we have been able to keep the door closed to that element however it continues to be an issue. He said some communities are welcoming them as revenue streams because you can regulate the machines and provide inspection fees and licensing fees. He said the brief presentation you are about to see was given at the Planning Commission last month where they had discussion and recommended to council to establish a moratorium on internet cafes.

Mr. Chodkowski said since that time there has been a lot of activity in Columbus; some legislation has been introduced; some which address the matter to our benefit and some of the language will not. He turned the floor over to Mr. Murray.

Mr. Murray said he has actually had 4 inquiries about this and each time he was approached it looked like gambling so he told them we don't do that here. He said he found out through news articles and other information that the state plans to regulate them and they claim they will protect the participants. He said they are saying the difference between this and a slot machine is that this is more like bars and bells than

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actual gambling. He said you see bars and bells at every church festival you go to or at the VFW. Mayor Flaute added there is Keno at Clancy's.

Mr. Murray said when he started this he wanted to find more backing to our ruling that these aren't a good idea but then as he started doing the research he found that these were going to be allowed. He said now he is on the hot seat because he is calling them gambling. He said the state's not calling them gambling; Springboro and Miamisburg are both getting ready to pass legislation on this and there is some legislation that already exists.

Mr. Murray said he has a packet of information for Council to go through starting with an article from the Dayton Daily news regarding House Bill 195, as well as various pieces of legislation one for a moratorium and one establishing business regulation/taxation codes for internet cafes. He said one city is charging a \$2,500 licensing fee per establishment and \$35 annual fee per unit.

Mr. Murray said being thorough in his research he attended one of the cafes in Harrison Township. He said he purchased a card for \$5 and they showed him how to swipe it on the machine and then you play as long as you want and the machine tallies points on your card. He said what he read is that he would be getting prizes or points but when he took his card to the cashier, she swiped it and gave him \$9.95. He said the card still works as a telephone card. He said that was his experience.

Mr. Murray said he went to Planning Commission with his information and their recommendation is a moratorium for 120 days until all the legislation pans out at the state level. He gave a Power Point presentation on internet cafes: operating businesses that have 1 or more computerized sweepstakes devices; open to the public whether or not there is any other business purpose; for a fee computerized sweepstakes devices can access the internet and dispenses prizes; internet cafes are also referred as sweepstakes or skill game operators. He said he saw no skills required. He said all the computers operate like a traditional slot machine and that's what it felt like to him - a slot machine environment and it felt like it had the oxygenated air in the room.

Mr. Murray said on the current status: many communities are passing moratoriums that temporarily stop them from operating. He said again, he classified this as gambling so he didn't see a need for a moratorium. He said a few cities are passing legislation regulating them on: where they should be; determining an application fee; determining annual certification fees; and parking regulations at 1 space per machine.

Ms. Campbell said what if someone wins big, does the city get a percentage of that. Mr. Murray said no, we don't get a percentage of the take; and he doesn't know how someone is taxed if they do win a lot of money. He said it would be interesting to know if the businesses report their profit and we would have to find out how we regulate that. He said at the state level HB 195 also regulates their operation and they are forming a bureaucracy for the regulation.

Mr. Murray said to summarize HB 195: internet cafes will require a license; they will be placed under the Ohio Casino Control Commission; cities will be permitted to prohibit internet cafes; there will be a limit to the number of machines at each location and in each county; establishes a variety of penalties; and puts in place an administration much like the liquor control board.

Mr. Murray reviewed suggested regulations: define internet cafes; establish how many machines per place; create the parking requirements; establish locations where internet cafes can go; designate exterior appearance; set licensing and application fees. Ms. Campbell asked if they would allow these in bars. Mr. Murray said no.

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Mr. Murray reviewed possible actions council could take: no action -- we can declare these as gambling operations and just forbid them; adopt a moratorium; adopt an ordinance to regulate these businesses; or adopt an ordinance to forbid their operations in Riverside forever.

Mr. Murray said the last proposal he got was to put 500 machines in at the Spin Kemp Shopping Center. He said it's one of the problem shopping centers we have and the last operation that wanted to go in there was BINGO which we disallowed because of the parking. He said what's the benefit and what's the ramification of this - that center looks so bad but it's not his decision which is why he brought this before them today to see what the will of council is. He said Planning Commission recommended a 120 day moratorium.

Ms. Campbell said we don't have to decide tonight do we. Mr. Murray said no; let me know what you want to do and we'll put it together.

Mr. Fullenkamp asked what the benefit was between taking no action and adopting a moratorium; is the city at some risk. Mr. Murray said we are at a little risk; it seems like everyone except us is defining this as something other than gambling; I say it's gambling. He said the risk is that courts are going to say it's not gambling. Mr. Fullenkamp said then we can make a decision. Mr. Murray said it's too late if we are in court; a moratorium buys us time until the state makes a decision.

Ms. Campbell said this isn't much different than playing BINGO or buying a lottery ticket -- it's all gambling. Mr. Chodkowski said the state looks at those differently. Ms. Campbell said she knows but if you are going to allow one, you might as well allow the other.

Mayor Flaute said that's what he's thinking; we are going to have a horse racing track right outside our city that's going to have all these kinds of machines in them and he knows some of the elements that gambling brings in which concerns him; and he knows there are people who will go there that can't afford to be there which concerns him as well. He said he has some issues but on the other hand people are going to go right outside our city and they are going to be gambling and we won't be getting anything out of it. He said do we need to have a moratorium or do need to direct staff to allow these folks to be in our city until the state makes a decision. He said we don't know when that will be and in the meantime these establishments are going in everywhere except Riverside.

Deputy Mayor Smith said that's right if we place a moratorium on them, we are kind of cutting our throat as far as not bringing that business in. He said still when you hear the words internet café you think of a coffee or sandwich shop with wi-fi. Mayor Flaute said that's what it is; there's no alcohol. Mr. Murray added there is free food and soft drinks.

Ms. Campbell asked if the VFW Clubs and all them would have to take their machines out. Mr. Chodkowski said those are video gaming machines without a prize. Ms. Campbell said that's still gambling, they are putting money in them. Mr. Chodkowski said he isn't an expert on video gaming. Ms. Campbell said if you allow one then you might as well allow the rest of them and the city will get more money out of them.

Mrs. Reynolds asked if we really wanted to encourage that kind of activity in our city -- she didn't know that we did. Mayor Flaute said it's going to happen; it's happening now. Mrs. Reynolds said it's not necessarily going to happen; we can enact legislation that says it can't happen. Mayor Flaute said true but as Ms. Campbell stated.... Mrs. Reynolds asked if they regulated age. Mr. Murray said 21.

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Deputy Mayor Smith said lets look at it on another spectrum; if you look at it in reference to an adult gentlemen’s club, we have several of those in our community and what benefit does our city gain from that. He said those are in other communities as well but we really don’t make any money off that as far as income tax. He said if you compare that to the internet cafes, he doesn’t see how we are going to gain from those either other than bringing people into the city to that location. Mayor Flaute said we can charge \$35 per machine annually and it has been proposed to put 500 machines in Spin Kemp.

Mr. Chodkowski said his advice to council would be to do nothing because there are several things which have yet to develop and which have yet to occur. He said those will all affect any action council might take. He said this thing is rife with legal pitfalls from start to finish to simply act to act. He said he would advise they don’t do anything until HB 195 has a life as a law. He said another prime example that was a really great idea that suddenly developed issues was the smoking ban; it started out as one thing, it was crafted for this, then amended for that, then they had to make exceptions, etc. and at the end of the day it still had problems and it still has enforcement issues. He said council should just be patient.

Mayor Flaute said the problem with that is we have someone who is interested in doing this now. He said if we don’t do anything, staff still has to decide if they are going to do something or not and we may lose an opportunity, whichever way you look at it, to make some income on the internet cafes. Mr. Chodkowski said he would caution council about that apple because from a judicial and a legislative standpoint, time and time again, courts have directed that government has to be able to validate a fee they are charging. He said if we say we are going to charge a \$2,500 licensing fee and a \$100 certification fee per machine, we have to be able to justify expense relative to that fee. He said a business could sue us and if we can’t validate a fee there can be extreme consequences. He said one of the things that might come out of HB 195 is an establishment of fees.

Ms. Campbell said can’t a business be told in advance if they do come in and put in machines that as soon as the state passes HB 195 that they will have to follow those rules. Mr. Chodkowski said the state’s rules would supersede our own rules depending on how the legislation is written. Ms. Campbell said we could get a head start on it. Mr. Chodkowski said again, he thinks there are more potential pitfalls to act rather than waiting to see what the landscape will be then react to that. He said he doesn’t know what staff will recommend but any legislation that council passes now will be impacted by HB 195.

Mayor Flaute said that might never happen. Mr. Chodkowski said you’re right but that still comes back to a home rule issue – do we choose or do we not choose to do any of that. Mayor Flaute said are we going to be proactive or are we going to sit back and wait. Mr. Chodkowski said that is in response to HB 195; that doesn’t mean we won’t ever do anything.

Mrs. Reynolds said she understood Mayor Flaute’s statement on a missed opportunity but she felt council needed to look at this more; we know nothing about internet cafes – we have a packet we will be able to look at and then talk more realistically about it. She said sometimes a dollar earned is twelve dollars spent and she didn’t know that was the way they should look at any of this. She said she couldn’t imagine Spin Kemp Shopping Center with 500 computers sitting there and 500 people pushing a button all day long. She said she didn’t know if that was an element she wanted in her city.

Mayor Flaute said his daughter is a teacher living in Las Vegas and when we’ve visited, we’ve gone to the slots and he doesn’t care for them at all, but the machines are full and people like them. He said there are a lot of retired people and generally the

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people he sees in casinos are focused on just one machine and when they lose their money, they go home. He said he sees what Mrs. Reynolds is saying and he doesn't think he would ever go but there are people that like that stuff. He said obviously these cafes are making money and if its retired people drinking a soda, he doesn't see why we wouldn't want that.

Mr. Fullenkamp said until we have a real discussion of potential revenue then he's not sure how to discuss this. He said he would like to know how we would generate revenue from this type business. He said he would like to read the material before he responds to the issue; and we don't know how this will be taxed.

Mayor Flaute said it would be a business in Riverside whether you personally agree or disagree. Mr. Denning said so are gentlemen's clubs and that's not necessarily a positive thing. Mayor Flaute said he didn't think you could compare this to that.

Mayor Flaute said let's read the material and he thinks council's consensus is to bring up the discussion again at the next opportunity.

Mr. Denning said he thought the biggest thing is we needed to keep an eye on HB 195 and whether or not we need to react.

d. Discussion Issue II – Burkhardt Project

Mr. Chodkowski said in relation to the last discussion we had on the Issue II Harshman/Valley intersection project, he spoke to the engineer yesterday and there is a minor modification to the project. He said the total cost to be paid by the city will remain the same but the intersection will be the Issue II application; it is approximately \$2.0 Million and half will be out of the city's pocket and the other half will be the grant. He said the remaining mill and fill will be a separate subcontract directly to the city. He said what it boils down to is the useful life; the constructed useful life of the Harshman/Valley intersection is 20 years according to ODOT therefore we could not apply for an Issue II grant to repair that intersection until 2021. He said the useful life of the mill and fill is only 7 to 10 years, however the way OPWC will look at this is if you apply both the mill and fill and the intersection it is the 20 year life. He said in the event we define a more permanent fix for those sections of mill and fill if we include this all together, we eliminate our ability to use OPWC monies for the permanent fix.

Ms. Campbell asked what area he was looking at. Mr. Chodkowski said the Harshman/Valley intersection from Transportation Drive to just past the McDonalds on Harshman and from McDonalds to just past the Speedway on Valley; that is the OPWC project - \$2.0 Million dollars for a 20 year fix. He said everything from Transportation Drive north to the city limit and everything south of McDonalds to Route 4 will be a mill and fill paid directly by the city. He said council originally intended to spend \$2.5 Million of its own money and we are just reshuffling how those dollars are going to be used. He said the total commitment that council authorized at the last meeting is still the same and will be brought forth accordingly in the legislation.

Ms. Campbell said the manager said something about Burkhardt. Mr. Chodkowski said that is the purpose of tonight's discussion; one of the projects we recommended for discussion under the OPWC Issue II program was the resurfacing of Burkhardt from the Dayton city limit to the Beavercreek city limit. He said that project is estimated to cost approximately \$1.5 Million and our original proposal was roughly 60% paid by the city and 40% paid by the grant – a request of about \$750,000 from OPWC and we would pay about \$800,000 out of our pocket. Ms. Campbell asked why that couldn't be assessed to the people's property to put in the sidewalks. Mr.

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Chodkowski said you could. Ms. Campbell asked why we weren't doing it; anywhere else the people have to pay for it. Mr. Chodkowski said we didn't do assessments on Linden or on south Woodman and we didn't do assessments when we reconstructed Valley. Ms. Campbell said that was done with grant money. Mr. Chodkowski said this is also going to be done with grant money in part. Ms. Campbell said we still have to pay \$800,000. Mr. Chodkowski said yes but the total concrete work is about \$250,000. Ms. Campbell said there are a lot of businesses on Burkhardt and she was sure they could afford to have work done.

Mr. Chodkowski said one of the things he would encourage council to do, regardless of whether or not they choose to fund this project, is between now and next year establish a policy for this type of issue - whether or not you are going to universally require it no matter how the project is funded - city dollars or mandatory assessment; council has not established that as a requirement for any of its projects. Ms. Campbell said she thought we should because look at the rest of the places, they had to assess it. Mr. Chodkowski said he didn't disagree with Ms. Campbell's observation on assessments but again, council hasn't provided that direction.

Mr. Chodkowski said in relation to the Burkhardt project, at the 60%/40% rate we are anticipated to score 38 and 32 in the two categories and the minimum scoring is about 42 or 43. He said in order to accomplish the higher score the city would seek only \$125,000 in grant funds from OPWC, a loan for \$375,000, and requiring the city to pay the rest in cash at the time the project is complete.

Mr. Denning said we are going to go through all that for \$125,000. Mr. Chodkowski said yes. Mr. Denning said if this is a project we feel is necessary, we could start it next week and get it done before Harshman/Valley is done. Mr. Chodkowski said correct.

Mr. Fullenkamp asked what would be the affect if we said let's not bother with the curbs and sidewalks, let's just straighten the road out. He said he knows the engineer made a comment about aprons. Mr. Chodkowski said if you reduce all ancillary concrete work which would be aprons and sidewalks, the total reduction would be right around \$260,000. Mr. Fullenkamp said one of the questions he had was what were the criteria for deciding on more sidewalks and curbs because we not putting them every place. Mr. Chodkowski said correct; the engineer filled in gaps - a black asphalt path would be replaced, a break in the sidewalk west of Woodman would be filled in, and a smidge down near Spinning would be filled in. Mayor Flaute said there is sidewalk on the other side of the street and Mr. Chodkowski said correct.

Mr. Fullenkamp said he would use St. Helen's for an example; there's no discussion and no sidewalk going in there. Mr. Chodkowski said correct; it is just asphalt. Mr. Fullenkamp asked if they weren't included because it's just not necessary; did they have permission to do that. Mr. Chodkowski said the engineer took the liberty to fill in the sidewalk; they were not instructed to do that. He said the engineer's evaluation was we are already getting this work done and for a few dollars more we could address some public safety issues. He said the real issue is the aprons and there are sections where we have asphalt overlay on the driveways. Mr. Fullenkamp said if there are storm water problems he understands that has to be fixed; aside from that he does use the sidewalks all the time but he is reluctant to use taxpayer dollars to put it in or to assess people during these economic times.

Mrs. Reynolds said she wants to make sure she understands the numbers correctly; \$2.5 Million for the Harshman/Valley project from the city limit near the old Meijer store to Route 4 - a mill and fill on everything but 75 feet back by Speedway and McDonalds on each side. Mr. Chodkowski said correct; \$2.5 Million of the city's money with a total project cost of \$3.5 Million. Mrs. Reynolds said the Burkhardt

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project is \$1.4 Million for a total of \$3.9 Million that would come out of our bank account for those projects. Mr. Chodkowski said yes. Mrs. Reynolds said of the \$1.4 Million, \$375,000 is in the loan program at a zero interest rate. Mr. Chodkowski said yes. Mrs. Reynolds said of the \$2.5 Million for the Harshman/Valley project what is the loan amount. Mr. Chodkowski said the loan based on the latest issue with regard for the intersection would be roughly \$450,000. Mrs. Reynolds asked payable in what period of time. Mr. Chodkowski said that's to be determined at the time of the loan execution. Mrs. Reynolds asked if there was a ball park of how long. Mr. Chodkowski said he believed it could be extended up to 15 years. Mrs. Reynolds said so we will have roughly \$800,000 in the loan program payable back in probably 10 years; she didn't think they would go 15 years. Mr. Chodkowski said he would recommend the same only because of the standpoint that the unfunded portion of the Harshman mill and fill has a useful life of about 10 years. Mrs. Reynolds said so we will be pulling approximately \$3.1 Million out of the checking account leaving us a total of about \$5.5 Million. Deputy Mayor Smith said it would be \$4.5 Million. Mrs. Reynolds said \$5.5 Million and Mr. Denning said there is \$1.0 Million in loans. Mrs. Reynolds said we also have some capital issues yet but we do have a \$348,000 savings in the dispatch contract. Mr. Chodkowski said that is offset by the loss of revenue from the state. Mrs. Reynolds asked if there was anyway to hold off on Burkhardt.

Mayor Flaute said as badly as he wants to see Burkhardt Road done because it is in really bad shape, maybe if we can put it off this year and apply for Issue II next year. Deputy Mayor Smith suggested looking at just doing the section from the Dayton city limit to Woodman. Mr. Chodkowski said paid by the city or apply to OPWC. Deputy Mayor Smith said whatever you can get. Mr. Chodkowski said he didn't know if that project would score well enough. Mayor Flaute asked what we will score on Harshman Road. Mr. Chodkowski said based on the new amended plan, under the SCIP program we would score an estimate 47 points and under the LTIP we would score 40, both about 5 points above what was funded in the last two rounds.

Mr. Fullenkamp said if these projects were the two highest on the list; when these projects get done, where do we go next. Mr. Chodkowski said in his opinion after these two projects, we will be looking at some more complicated projects such as Airway which will require multi-jurisdictional funding and Springfield Pike which will require reconfiguration and multi-jurisdictional funding. He said he would guess those are the two busiest roads that are next in need. Mayor Flaute said those are certainly not as bad as Burkhardt Road. Mr. Chodkowski said the portion of Airway from Smithville to the bottom of the hill is probably 3 to 5 years from the condition that Burkhardt is currently in. He said Springfield Pike is probably 5 to 7 years from the condition that Burkhardt is currently in but that could change depending upon base traffic or other factors. Mr. Fullenkamp said these sound like planning issues. Mr. Chodkowski said they are but those depend on who has the ability to plan with us; we may have access to money faster than the other parties do but its something we need to consider. Mrs. Reynolds asked when that would be evaluated. Mr. Chodkowski said we are going to start looking at that when we get direction from council about where we want to go fiscally long term.

Mr. Denning said the number he saw we would get from an Issue II grant for Burkhardt Road was \$125,000 whenever we did it; so if we say we are going to do half of Burkhardt this year, Dayton line to Woodman, and then do Woodman to Beaver creek next year; just do it with city funds - get it done and move forward, would that get us brownie points from anyone for doing this on our own. Mr. Chodkowski said anyone that would throw a dollar our way would simply be glad we didn't ask. Mr. Denning said in the big scheme of things, we need to get this road done and will waiting another year eat up the \$125,000 in additional costs because the road is in worse shape. Mr. Chodkowski said Ms. Campbell talked about assessing and what we should assess, how much we should assess; those are all things council needs

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to consider and in the event council was able to make that determination and establish that legislative policy, the city could actually borrow money and manage our cash significantly better with that provision in hand. He said while we would still be depleting our funds, we wouldn't be depleting them at such a rapid rate that we couldn't respond to economic changes. He said if you establish that policy in the next 6 to 8 months, you could actually leverage that position to do the road in the fall. He said you wouldn't be significantly behind the OPWC schedule.

Mrs. Reynolds said we have nothing to back a loan request with right now, there is no guarantee, and she thinks that what she is hearing the manager say – having the assessment ability and policy in place makes the city a more viable entity. Mr. Chodkowski said his specific concern is our bond rating would be impacted by not having a guaranteed support revenue stream.

Ms. Campbell asked if sidewalks were going to be put in from Smithville down to Woodman. Mr. Chodkowski said there is one little area between the bike path and K-Mart that does not have sidewalk. Ms. Campbell said she thought that was City of Dayton. Mr. Chodkowski said explained the property line and said that is one of those annexed pie shapes. Deputy Mayor Smith said Dayton annexed our property and left us the road.

Mayor Flaute asked what the pleasure of the council was. Mrs. Reynolds said we really need to decide if we want to look at assessments and she thought that was going to take some research and information and then come back and look at doing Burkhardt next year.

Deputy Mayor Smith said he thought they really needed to look at doing Burkhardt from the City of Dayton to the bike path – that is the worst part of the road. Mrs. Reynolds said we are going to look at how we want to handle the assessment of sidewalks, aprons, and curbing. Mr. Chodkowski said it doesn't have to be limited to those; it can be for the entire cost of the improvement.

Mayor Flaute said let's get that in a work session and as much as he hates it, Burkhardt Road is going to have to wait again. He asked Mr. Denning if that was agreeable. Mr. Denning said he'll go with the majority but those are the two worst roads and we need to get them done; that's our face, people drive through here and if they are thinking about putting a business here or moving here, that's what they look at. Mayor Flaute said it would be \$125,000 to do the road from the Dayton city limit to Woodman. Mr. Chodkowski said no; we have no idea. Mr. Denning said what he was saying is if we do it ourselves, its only \$125,000 more than if we go through the whole process and his question was, is the road going to get \$125,000 worse if we wait until next year. He said if we don't apply for this until next year then it's actually not going to get done until the year after. He said so we are looking at 2 years out before it gets done and are we actually going to be money ahead if we put our money in the pot and get it done now.

Mr. Chodkowski said if you determine through the course of discussion to self fund the project, the money is going to be there. He said you can make that determination in February or March and by the time the documents are prepared and bids are out early, we can be repaving that in September of 2012, so we would only be a few months behind if we had tried to include that with the OPWC stuff. Mr. Denning said he thought they were talking about applying for OPWC next year which would put the project construction in the following year. Mr. Chodkowski said it depends on a couple of different factors; you could pre-engineer the project and OPWC makes their awards in August/September so the dollars should be available that year. Mr. Miller said the funds are tied to the federal budget. Mr. Chodkowski said so it would be

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October and it is quite possible you get it out in the fall of 2012 or early spring of 2013.

Mrs. Reynolds asked if we could score any better on Burkhardt, anything we could leverage. Mayor Flaute said maybe that's what we should do - apply and let them turn us down, then next year we can apply again. Mr. Chodkowski said we could potentially score higher in item 8 - readiness of project, in item 7 - funding, and if we could coordinate with the county, there is an additional point for addressing infrastructure. He said that would depend on if they can work out their bulk water sale arrangement with Greene County.

Mr. Schock said he thought we should just move forward on both of them. Deputy Mayor Smith said if we wait won't that drive up the cost of materials. Mr. Chodkowski said it all depends; believe it or not, material costs are down right now. Mr. Schock said that's because less projects are being done.

Ms. Campbell said what about extras; what if you come across a bad water line pipe or drain off - is that all included in this price. Mr. Chodkowski said this project as proposed wouldn't get into that; we are simply taking off the top layer of road and putting a new layer back down. Ms. Campbell said so there won't be any sidewalks. Mr. Chodkowski said as it is currently proposed there are but council can take them back off. Ms. Campbell said no, but there are more businesses along there and they might say to go ahead and assess them. Mr. Chodkowski said it's not a matter of opinion for the property owner; it is a matter of legislative decision by council.

Mr. Denning said the question is if we want that area to look nice and have sidewalks. Mr. Schock said the sidewalks would probably help with the drainage coming off from the street. Mr. Denning said it would provide a uniform streetscape.

Mrs. Reynolds said she understands that totally but if we try to do both of these projects this year, we are going to reduce our funding to a level that she didn't think would be acceptable to us. Mayor Flaute said but chances are we are not going to get it approved and we'll have a better chance next year. Mrs. Reynolds said if we know we are going to apply for this next year and we know going in that \$125,000 is about the best we will do; we will have had a year to assess where we are at. She said we are not even done with the budget process yet for this year and we've already looked at \$280,000 worth of increases putting us up to \$400,000 and we haven't done capital yet, so that is her concern. She said we need to look at the project that is most important to the city right now; if it's Burkhardt then do Burkhardt, if it's Valley/Harshman then do that, but we have to be realistic about where we are standing with our money. She said if something happens then where are we going to be.

Mayor Flaute said that's true. He said his question is how much more helpful will it be if we get turned down this year; how much would it help us next year. Mr. Chodkowski said it wouldn't be any significant increase in the scoring because we are already considering the 2008 application as a previous submittal, so we've already scored the bonus point.

Deputy Mayor Smith said if we did Burkhardt from Dayton to the bike path and then didn't do Harshman from Transportation Drive north to the city limit; wouldn't that save us money. Mr. Chodkowski said the issue is the traffic counts; it's going to be the volume scope and he would say if there is that big of a concern from council regarding the condition of Burkhardt from Woodman to the Dayton city limit, from what he can recall on the condition and the layout of the road there weren't significant grade issues there so it might be one where we can simply request a contractor to come out and say what this will cost. He said it might be one we could do relatively easily in house; the biggest problem with Burkhardt is you run into the crown and grade issues once you

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get east of Woodman and in order to do that the right way it is \$3.5 Million just from Woodman to Granville. Deputy Mayor Smith said but it's been like that for 40 years. Mr. Chodkowski said and it is going to be a very expensive fix; when we talk mill and fill on Burkhardt, keep in mind that not all of Burkhardt is going to get the full useful life of the mill. Deputy Mayor Smith said if you just go from the bike path to the Dayton city line, you are just fixing what needs to be fixed right now or at least until our situation improves. Mr. Chodkowski said that's what he would say and now we are coming back to a project that is so small it is specifically city funded. He said get through the planning process you need to get through; he thinks council needs to fully understand the operational needs of the city and the capital equipment needs before you make any long term non-grant supported capital decisions. He said if you were to pull out just based on our discussions related to the Fire Department, the Police Department, and the Public Service Department in conjunction with the dollars you want to pull out for the Harshman Road project and assuming you want to do 100% of the Burkhardt project; you would have 3 years of operating reserve. He said that's how fast the money will go. He said he understood what Deputy Mayor Smith was saying however he thought everyone would appreciate knowing we can get an ambulance to them in less than two minutes as opposed to knowing they have a smoother ride for 1,000 feet on Burkhardt Road.

Mayor Flaute said it's a lot more than just a smoother ride; as Mr. Denning stated there's a lot more involved but he's beginning to see that maybe we should just do the Harshman Road project and address the other situation as we can. He asked if there was any consensus. Deputy Mayor Smith asked if we were going to dig the intersection up. Mr. Chodkowski said the intersection is a modified asphalt overlay; it will receive some minor median treatment; it will get a good grind on it, and when it is overlaid it will get a chemical treatment called gilsonite which will make the asphalt less fluid and similar to concrete. He said it was applied to Airway which has held up fairly well to the fluid push. He said that is designed to be the 20 year fix.

Ms. Campbell said there are a lot of trucking companies there that cause a lot of wear and tear.

Mayor Flaute said staff has their direction and he thanked the audience for being patient - he knows council went way over on the time.

ITEM 7: RECESS: The Council took a recess at 8:27 p.m.

ITEM 8: RECONVENE: The meeting was reconvened at 8:40 p.m.

ITEM 9: PLEDGE OF ALLEGIANCE: City Manager Bryan Chodkowski led all those in attendance in the pledge of allegiance.

ITEM 10: MINUTES: Consider approval of the minutes of the July 7, 2011 Council meeting. A motion was made by Mrs. Reynolds to approve the minutes. Mr. Schock seconded the motion.

Mrs. Reynolds pointed out a typographical error on page 15, paragraph 4, line 5 - the word "cracking" should be "tracking".

With no further additions or corrections, a vote to approve the minutes as amended was as follows: All were in favor; none were opposed. **Motion passed.**

ITEM 11: PRESENTATIONS: Mr. Jerry Ellender, Ms. Marilyn Steiner, and Ms. Ruth Newhouse from the Mad River Local School District.

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Mayor Flaute welcomed Mr. Ellender, Ms. Steiner, and Ms. Newhouse and gave them the floor.

Mr. Ellender thanked council for having them this evening and said he was the treasurer for the Mad River School District. He said they came tonight because Mr. Fullenkamp emailed some questions about the levy and they wanted to make themselves available if there were any questions about why the district is running a levy or how we decided or what the need is or about open enrollment. He said the district's budget ran about a \$2.5 million deficit last year; our revenues were \$34.5 Million and we spent about \$37 Million. He said for the upcoming year we are facing cuts from the state in our funding just like you received a cut in your local government fund so we are facing, after retirements and attritions of people left, about a \$2.5 Million deficit again.

Mr. Ellender said the district has made a decision to open enrollment and the impact of that is we have received applications for 160 students. He said approximately 30 of those were students already attending Mad River Schools who were following a teacher from another district so there are about 130 new students. He said we receive \$5,700 per child for an open enrollment student and we will probably net around \$750,000 to \$1.0 Million in new money from that. He said with the \$2.5 Million deficit, it will still leave us \$1.5 Million short. He said the board decided to put the 5.9 mill levy on which will generate about \$1.5 Million per year for the district to try to get our district budget back to a balanced budget.

Mr. Ellender said we've had about 20 people leave employment with the district this past year through retirements and attritions and we have not replaced any of those positions. He said we've lost three administrators in our central office; our superintendent is leaving and we will have a new one, but we are just moving people up and moving people into positions wherever we can. He said we can't really afford to replace anyone at this point and he's sure council can relate to this because of the local government fund cut. He said it's not easy for any of us to keep our budgets balanced in local government.

Mr. Ellender said the board does not want to have to put a levy on in this economy and the last time the district put a levy on was in 2006 so we have managed to go 5 or 6 years before the need comes again. He said our property tax revenue is a fixed dollar amount so the money we were receiving in 2006 from property taxes is still the same amount we are receiving in 2011. He said we don't receive any kind of increases in our property tax levies so schools are forced to go on the ballot periodically to generate additional revenue to keep up with the inflationary expenses the school district experiences.

Mr. Fullenkamp thanked Mr. Ellender for responding to his email and he hoped the questions he asked made sense. He said the literature in the newsletter didn't really reflect the needs and that kind of concerned him. Mr. Ellender said he appreciated the feedback; we have multiple pieces of literature that the levy committee has put out and he hoped they had done a better job in some of those than others in explaining that. He said its one of the reasons he came to the meeting tonight, he wanted to make sure they understood they wouldn't be doing this if there wasn't a need. Mr. Fullenkamp said quite honestly the letter Mr. Ellender sent him would have been better than some of the literature - it was informative.

Council members thanked him for coming. Mr. Ellender said there were 2 board members here as well, Marilyn Steiner and Ruth Newhouse, and he didn't know if they wanted to add anything.

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Ms. Steiner said one of the things they are hearing from the community is the parents along with the students are concerned about what type of child the open enrollment kids are going to be that are coming in. She said one of the things the administration did was put a lot of safeguards in the policy to make sure the child would be appropriate in this district. She said they had to meet certain criteria which would be behavior, school attendance, and grades and there were students that were not accepted due to those guidelines. She said each child that is coming into our district has to apply every year and if for some reason it doesn't work out, they may not be accepted the next year – we have that option. She said if open enrollment doesn't seem to fit our district, the board has the option of taking open enrollment away. She said we are very conscience of protecting our state rating and the type of kids we are bringing in.

Ms. Steiner said we were surprised at the wide variety of districts but the majority is from Dayton. She said she has not seen the applications but she has heard they look like great students; attendance is good, no behavior problems, and the grades are great. She said it's something new and we are trying to calm the nerves. She said as a school district over the last couple years we have lost 300 to 400 students for various reasons; not only are there state cut backs but we have to replace the money lost with these students leaving, so this is one thing that is being done. She said so if you, being leaders in the community, have any parents or students that have concerns about who is going to be coming in, please encourage them to contact us. She said we will be happy to talk to anyone so they understand and she thought once it gets going people will see it's a real benefit to the community.

Deputy Mayor Smith asked what the plans were if the levy didn't pass. Ms. Steiner said we will go back on the ballot in November. Deputy Mayor Smith said so there won't be any immediate decrease in services. Ms. Steiner said no; we have safeguards in place and one of the stipulations in bringing a child in is we are required to have the staff. She said it would defeat the purpose if we had to add staff to accommodate the open enrollment students and we only accepted what we could handle with the staff we have now. She said there were some students they just couldn't accept because we didn't have room for them.

Mr. Fullenkamp said so we do have some excess capacity in the classrooms right now. Mr. Ellender said yes. Mr. Fullenkamp asked how many students can be accommodated without hiring additional staff. Mr. Ellender said not a whole lot more but it depends on the grade; we look at it on the grade level. He said with the open enrollments it will bring us somewhat close to capacity with the teachers we have; we lost 20 people and some were teachers we didn't replace. He said if in year two we had another 150 students it would be a lot harder to find places to put all of them but we have to evaluate it on a year to year basis. Mr. Fullenkamp said on the other side of that, the \$5,700 only seems to cover about 60% of the cost of educating a student in the Mad River School District. Mr. Ellender said if you take our total costs and divide by the number of kids, that's true but with open enrollment and where we are now, we won't spend additional dollars to service them, it will just increase our revenue. He said 130 new students spread out over 12 grades plus kindergarten, you are only talking about 10 kids per grade and you may be only adding one child per room. He said it also depends on our resident students, unfortunately we never know exactly what our enrollment is going to be until the kids show up on the first day of school in the fall. He said if it was September he could give a better answer. Mr. Fullenkamp asked if any of the open enrollment students brought any other money with them. Mr. Ellender said no; just the state funding and that's it, unless they are a special education student.

Ms. Steiner said when the numbers came, we had the highest number of kids applying were in kindergarten and first grade and then there was another spike in the freshmen

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year. She said the parents want this to be a long term thing, get their child in and keep them with the district throughout their school years. She said same with the high school, some of the programs we have are tech programs and if they enter as a freshman, they will spend their high school career with us. She said they are not looking at this as just one year.

Mrs. Reynolds thanked them all for being here. She asked what their average class size was, elementary and high school. Mr. Ellender said at the kindergarten level it's about 20, grades 1 through 4 is about 24, middle school is about 24, and high school is 24 to 26. Mrs. Reynolds asked how many teachers were lost last year. Mr. Ellender said 20 people total and about 13 were teachers.

Mrs. Reynolds said won't the state and federal education program dollars follow these children when they become part of your count such as the Title One and Chapter One. Mr. Ellender said those are not funded on a per student basis, those are done on a different federal allocation formula based on the value of the district and other factors; federal money isn't adjust up and down with enrollment like the state does. He said the state does it exactly on enrollment. Mrs. Reynolds said the state does it on your free and reduced lunch count. She asked if they knew the numbers on the free and reduced lunch count on the open enrollment. Mr. Ellender said we don't know yet; you have to go through the open enrollment process before you get to the point where you are asking for free and reduced lunch applications. He said that will come after they start school. Mrs. Reynolds said they will adjust your count at that point and Mr. Ellender said correct. Mrs. Reynolds asked what percentage the free and reduced lunch count was. Mr. Ellender said about 60% and a lot of that is a reflection of the economy; it varies from building to building and one of our buildings has been as high as 90%.

Ms. Steiner said we've seen an increase in the summer feeding program which goes all year long and we added on a site at Stebbins this year. She said another thing she forgot to mention on the open enrollment children is we do not transport the children; it is up to the parents to bring their child to school; so once again it is not incurring an additional expense on us.

Mr. Chodkowski asked what the proposed levy meant in additional dollars on a \$100,000 value property. Mr. Ellender said \$180 per year for a \$100,000 home. Mr. Chodkowski said it was stated earlier that if the levy didn't pass the district would seek to put it back on the ballot in November; how many cycles could you continue to see defeat before cost cutting measures would be effective. Mr. Ellender said two times; August and November and if they were both defeated, we would have to make additional cuts for the upcoming school year. Mr. Chodkowski said those cuts would not be seen until this time next year. Mr. Ellender said yes, the following school year.

Ms. Steiner said every district that is in financial hardship is trying to avoid being in a financial emergency and it's not a good thing; you actually could lose local control. She said they tell you where your cuts will be whether it's good for the district or not.

Mrs. Reynolds said if the levy doesn't pass what are the anticipated cuts. Mr. Ellender said 85% of our budget is personnel costs so it's very difficult to make any significant budget reductions without reducing personnel. Mrs. Reynolds asked what that would take the class size up to. Mr. Ellender said he doesn't have that exact number but it would obviously increase the class size if we had to cut teachers. He said he doesn't know that it would just be teachers; we try to reduce in all areas across the board. Ms. Steiner said we lost 3 administrators and only replaced one; the last ditch effort is to do anything but touch the classroom but if push comes to shove it could end up being something you have to do.

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Mrs. Lori Luckner asked what measures have been done besides the staff cuts to save money for the school district; that was not in any of the information we received. Mr. Ellender said a lot of little things but we are probably going to be reducing things like the number of field trips, supplies, equipment, text book replacements, and things like that to reduce spending in addition to the personnel costs. Mrs. Luckner said even if the levy passes you will be doing that. Mr. Ellender said we already have done that; but if the levy doesn't pass we will do more. Mrs. Luckner said in the school newsletter it didn't really explain what other cuts you've done besides the staff and to her it didn't show they had worked hard enough or proven that you are really in a dire need for this money. She said so far that's about all the community has seen is what's in that newsletter; she doesn't have children in the school district and there are a lot of others that don't have school children so you are going to have a tough time. Mr. Ellender said the ratio of employees is we have about 290 teachers and about 525 employees all together.

An audience member said it was talked about increasing the number of students in the classroom and he was curious, in an ideal world, what the class size would be. Mr. Ellender said 20 at the youngest level and about 26 at the higher grades. Ms. Steiner added that she had a 28 year old and 24 year old son and daughter and the teacher/student ratio back when they were in school was the same as it is now. She said it's ideal and we want to keep the count down low because it's best for the child.

Mayor Flaute thanked them for coming in and said we would do our best to get the word out.

ITEM 12: ACCEPTANCE OF WRITTEN CITIZENS PETITIONS: Mayor Flaute advised citizens to fill out a form if they wished to speak about agenda or non-agenda items.

ITEM 13: PUBLIC HEARING: Notice of public hearing scheduled for August 18, 2011 regarding a proposed map amendment.

Mr. Chodkowski said pursuant to the codified ordinances of the city, a zoning map amendment has been submitted and council is required to hold a public hearing. He said we are requesting council schedule this hearing for its meeting on August 18th. Mayor Flaute said there is consensus and we will have that hearing.

ITEM 14: CITY MANAGER'S REPORT:

(1) FYI Items

- a. Council Request Sheets.
- b. Council Agenda Calendar.
- c. Weekly City Manager's Report.
- d. Minutes of the June 23, 2011 Health & Safety Commission meeting.

(2) Monthly Reports

- a. Fire Department
- b. Police Department
- c. Service Department
- d. Planning and Economic Development
- e. Finance Department

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Mr. Chodkowski said you have my report as well as supplements from staff and we would be happy to answer any questions.

Mr. Fullenkamp asked about the completed surface restoration at Law's Mobile Home Park. Mr. Chodkowski said there were a couple instances where large pieces of equipment created depressions in some of the natural areas when they were excavating and removing the trailers; as a result a few lots required top soil be brought in to level it out and reseed. He said in addition, there are pads that hold a partial load and a long sidewalk and in manipulating some of that equipment portions of those runners were cracked or broken, so those needed to be repaired or replaced. He said all that work should be done or very close to being done; the contractor finishing that project is also the one working on the in-progress NSP, Phase II. Mr. Fullenkamp asked if there was any way we could get them to remove the weeds at Law's. Mr. Chodkowski said that is an issue we wanted to address but because of some of the measures currently being corrected, we wanted those items addressed first before we addressed the vegetation issue.

Mr. Fullenkamp asked about the Community Park electric issues. Mr. Chodkowski said several years ago when the lights were installed, the wiring connecting the lights to the control panel was simply trenched in without any conduit. He said wire today is designed to be laid like that but back then it was not. He said through the course of wiring, rewiring, moving, etc. it was determined that this wire should not be where it is, it was in a bad condition, and while it could continue to hold load, we did not know how long it could do that for safety reasons. He said the work is being contracted to be done. Mr. Fullenkamp asked if we knew the potential cost. Mr. Miller said we have one estimate and are getting other estimates; the current estimate is about \$11,500 to replace all the wire that was put in place 20 to 30 years ago. He said it has deteriorated to the point that there are some potential safety issues.

Mr. Fullenkamp asked if staff could talk about the jobs ready grants. Mr. Murray said we have made a pre-application to the State of Ohio for a spec building. He said the grants are \$3.0 Million in size and this will probably be the last time these grants are ever offered. He said he has a meeting next week to further evaluate our application and he has put in a request for a \$7.0 Million building with the first \$3.0 Million being a grant. He said the city would have 3 years to enact the money or let it fail.

Mayor Flaute said he just had one question for the DP&L folks; is there any kind of foundation money available when we work in community parks. He asked Mr. Michael McKinney, Engineer from DP&L, if he could check to see if there are any funds available to help with the wiring issue at Community Park.

Mayor Flaute said the zero overtime for the Public Service Department is good and all the overtime looked good this time.

Mrs. Reynolds thanked Mr. Chodkowski and Chief Reiss for the efforts in the Sheller neighborhood and said she appreciated all the work they did over there. She said we have numbers now and we are able to assess this more carefully.

Mr. Schock said since we are going to fix the street lights in the park, are we going to use them now. He said they have never been on. Mr. Denning said the lights come on at 9:00 p.m. and go off at midnight. Mr. Schock said he lives there and he's never seen the park lights on. Mr. Chodkowski said we will make sure they are returned to operation.

ITEM 15: PUBLIC COMMENT ON AGENDA ITEMS: There were no public comments on agenda items.

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ITEM 16: OLD BUSINESS:

- a. Ordinance No. 11-O-471 to make supplemental appropriations for current expenses and other expenditures of the City of Riverside, State of Ohio, for the period January 1 through December 31, 2011.

Mr. Chodkowski said this ordinance is to make supplemental appropriations to the current operating budget.

A motion was made by Mrs. Reynolds to read Ordinance No. 11-O-471 for the second time by title only and approve its final adoption. Mr. Fullenkamp seconded the motion. All were in favor; none were opposed. **Motion passed.**

ITEM 17: NEW BUSINESS

I. RESOLUTIONS

- a. Resolution No. 11-R-1576 in support of "Operation 1,000 Cherry Trees and 3-11 Memorial Park" to be developed within the complex and area of the National Museum of the United States Air Force.

Mr. Chodkowski said this resolution is brought forth pursuant to council's request in support of Operation 1,000 Cherry Trees.

A motion was made by Mrs. Reynolds to approve Resolution No. 11-R-1576. Mr. Denning seconded the motion.

Ms. Campbell asked if we knew where the trees were going to be put yet. Mayor Flaute said we don't know for sure. Ms. Campbell said they aren't going to plant them around this building, are they. Mr. Chodkowski said at this point in time the request is to plant them at WPAFB. Ms. Campbell said good, because the birds would have a field day out there.

With no further discussion: All were in favor; none were opposed. **Motion passed.**

- b. Resolution No. 11-R-1577 authorizing the Riverside Community Festival Committee to place temporary promotional signs in the public right of way under certain terms and conditions.

Mr. Chodkowski said this resolution is brought forward to approve placement of promotional signs for the community festival and it is annual, recurring legislation.

A motion was made by Mr. Denning to approve Resolution No. 11-R-1573. Mr. Fullenkamp seconded the motion. All were in favor; none were opposed. **Motion passed.**

ITEM 18: PUBLIC COMMENT ON NON-AGENDA ITEMS: There were no public comments on non-agenda items.

ITEM 19: COUNCILMEMBER COMMENTS: Mr. Denning said we have a new grandbaby; Madison Marie Denning was born Saturday morning at 2:40, weighing 7 lbs. 11 oz., and was 20 1/2 inches long. Mrs. Reynolds said you also had a

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champion swimmer on Saturday. Mr. Denning said yes we did; our other granddaughter was swimming in Miamisburg.

Mr. Schock said he would not be able to attend the next council meeting because he will be on vacation.

Mr. Schock said he also wants everybody to think about putting on the ballot this year a half of one percent increase in income tax and taking off 2 mills from the property tax. He said he has the paper work from our last survey which shows the citizens would say yes as long as we do a good job of showing what we are going to use that half of one percent for. He said taking off 2 mills from the property tax would help offset the people who are on fixed incomes. He said Mrs. Reynolds made a comment earlier of what we were going to do; this is what we do, we cannot keep spending our money. He said he would like to see an ordinance that says we cannot spend any of our savings unless it is for capital improvements. He said we are using our savings to fund everyday running of this city and that is not good management. He said this is what we have to do and we've been putting it off for way too long. He said he's sat up here three years and this is something he has to do before he leaves to get our city going in the right direction. He said in the right direction we can do the capital improvements but we have to show the citizens exactly what we are going to use the money for. He said we're not asking for the citizens' hard earned money so we can give out pay raises, we want to show them that we need it for capital improvements to continue to build our community because without a good strong city, what would our schools do. He said we have good departments and how are we going to just maintain the bare minimum; this is the way to do it. He asked how long we had to get something on the ballot. Mayor Flaute said we have until August 5th for taxes and August 25th if you are running for office. He said we would have to do it at the next meeting so if anyone wants to put it on the agenda they are welcome to do so. Mr. Schock said it needs to be on the next agenda so we can get legislation passed to put it on in November. He said if you sit back and say no, then you are going to sit back and allow your city to fail by spending money it doesn't have.

Mayor Flaute said if anyone is interested we can put that on the next agenda. He thanked Mr. Schock.

Mayor Flaute said RC Hobby has a grand opening on Saturday so please come on over. He said Leonard's, an old time barbershop, is also in the center; it's a pretty cool concept and Riverside is blessed with barbershops, especially a unique one like that. He said Allstate has a new office going in there as well. He said Riverside is growing and getting better so please consider attending the ribbon cutting on Saturday, July 23rd from 10:00 a.m. to 2:00 p.m.

Mayor Flaute said he had information to share which includes: Miami Valley Regional Planning Commission's Annual Report; information on the Walk to End Alzheimer's; and information on joining National Recovery Month for persons who have recovered from horrible events that have touched their lives. He said he attended a breakfast given by the Dayton Development Coalition and it was a very good meeting. He said he also visited our folks down on Harshman Road; they call themselves the Sikhs and it is a very interesting religion. He said they are happy to be in our community and if you are driving down Harshman you will see a sign with symbols and it says One God down the side. He said if anyone is interested, please borrow the book; it is fascinating and we want to welcome them as part of our community. He said he had 8 weddings in the past two weeks and he also attended the Aviation Hall of Fame ceremony at the Museum.

Deputy Mayor Smith said his son is getting married on Saturday and Mayor Flaute will be performing the ceremony. Mayor Flaute said it will be at the Wedding

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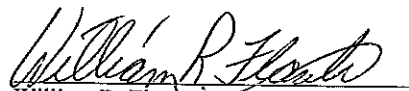
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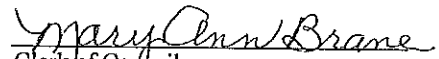
Connection and anyone who is thinking about getting married should check them out. He said they are located behind Bob Evans on Linden.

Mrs. Reynolds said she is normally very hard on our neighbors to the west for several reasons but tonight she would like to compliment the City of Dayton; they have a new housing program on East Third Street to downtown. She said it is changing the look; they have torn down a lot of homes and they are putting up some beautiful structures. She said we should applaud them for their efforts because we abut each other and we are good neighbors. She said they are doing a great job on this housing program and she hoped everyone would go see, they are nice homes.

ITEM 20: EXECUTIVE SESSION: There was no executive session.

ITEM 21: ADJOURNMENT: A motion was made by Mr. Denning to adjourn. Ms. Campbell seconded the motion. All were in favor; none were opposed. The meeting was adjourned at 9:27 p.m.


William R. Flaute, Mayor


Clerk of Council