



**CITY OF HUBER HEIGHTS
STATE OF OHIO
City Council Meeting
Regular Session
July 11, 2022
6:00 P.M.**

City Hall - Council Chambers - 6131 Taylorsville Road

1. **Call The Meeting To Order - Mayor Jeff Gore**
2. **Invocation** - Pastor Jon Strifler Of The First Christian Church At 6114 Fishburg Road, Huber Heights, Ohio
3. **Pledge Of Allegiance**
4. **Roll Call**
5. **Approval Of Minutes**
 - A. City Council Meeting Minutes - June 27, 2022
 - B. City Council Special Meeting Minutes - June 29, 2022
6. **Special Presentations/Announcements**
7. **Citizens Comments**
8. **Citizens Registered to Speak on Agenda Items**

9. **City Manager Report**

10. **Pending Business**

- A. An Ordinance Approving The Editing And Inclusion Of Certain Ordinances And/Or Resolutions As Parts Of The Various Component Codes Of The City Code Of Huber Heights, Ohio; Providing For The Adoption And Publication Of New Matter In The Updated And Revised City Code As Supplement 10; And Repealing Ordinances And Resolutions In Conflict Therewith.
(second reading)
- B. A Resolution Declaring It Necessary To Improve Public Streets And Easements In Section 2 - Phase 5 And Section 7 - Phase 5 By Constructing And Installing Certain Public Infrastructure Improvements, Including Street Improvements, Subbase, Concrete Curb/Gutter With Drainage, Asphalt, Street Lights And Signs, Sidewalk, Survey Work And Engineering, And In Each Case, All Other Costs And Improvements Necessary And Appurtenant Thereto.
(second reading)
- C. An Ordinance Determining To Proceed With The Improvement Of Public Streets And Easements In Section 2 - Phase 5 And Section 7 - Phase 5 By Constructing And Installing Certain Public Infrastructure Improvements, Including Street Improvements, Subbase, Concrete Curb/Gutter With Drainage, Asphalt, Street Lights And Signs, Sidewalk, Survey Work And Engineering, And In Each Case, All Other Costs And Improvements Necessary And Appurtenant Thereto.
(second reading)

11. **New Business**

CITY COUNCIL

Anthony Rodgers, Clerk of Council

- A. A Resolution To Accept The Resignation Of Anthony C. Rodgers As Clerk Of Council And To Appoint Anthony C. Rodgers As Clerk Of Council.
(first reading)

City Manager Search Process (Items 11-B - 11-E)

- B. A Motion To Direct The Clerk Of Council To Authorize Baker Tilly To Restart The City Manager Search Process.
- C. A Resolution To Appoint Gerald Smith To The Position Of City Manager Of The City Of Huber Heights.
(first reading)

- D. A Resolution To Appoint Richard Dzik To The Position Of City Manager Of The City Of Huber Heights.
(second reading)
- E. A Resolution To Appoint John Russell To The Position Of City Manager Of The City Of Huber Heights.
(first reading)
- F. A Motion To Amend Section II - Meetings - (M) Attendance, Absences And Removals Of The 2022 Rules Of Council As Attached.
- G. A Resolution Affirming The Adoption Of Resolution No. 2021-R-6960 Directing The City Manager To Solicit Qualifications From Firms To Conduct A Community Needs Assessment.
(first reading)
- H. A Public Hearing Scheduled For July 11, 2022 By The Huber Heights City Council For Case RZ 22-17. The Applicant Is Michael Skilwies. The Applicant Is Requesting Approval Of A Replat And A Rezoning Of 3.55 Acres From Agricultural (A) To Planned Industrial (PI) To Allow The Continued Operation Of A Truck, Diesel And Heavy Equipment Repair Business For Property Located At 9416 Taylorsville Road And Further Described As Parcel Number P70 03902 0018 On The Montgomery County Auditor's Map.

ADMINISTRATION

Bryan Chodkowski, Interim City Manager

- I. An Ordinance To Approve A Rezoning From Agricultural (A) To Planned Industrial (PI) And A Lot Split For The Property Located At 9416 Taylorsville Road And Further Identified As Parcel Number P70 03902 0018 On The Montgomery County Auditor's Map And To Not Accept The Recommendation Of The Planning Commission (Case RZ 22-17).
(first reading)
- J. A Resolution Authorizing The City Manager To Execute A Lease For 6053 Brandt Pike.
(first reading)
- K. A Resolution Amending Resolution No. 2022-R-7130 Regarding Certain Surplus Property.
(first reading)

12. **City Official Reports and Comments**

13. **Executive Session**

14. **Adjournment**

AI-8498

Minutes A.

City Council Meeting

Meeting Date: 07/11/2022

Approval of Minutes - 6/27/22

Submitted By: Anthony Rodgers

Department: City Council

Council Committee Review?: None

Date(s) of Committee Review: N/A

Audio-Visual Needs: None **Emergency Legislation?:** No

Motion/Ordinance/ N/A

Resolution No.:

Agenda Item Description or Legislation Title

City Council Meeting Minutes - June 27, 2022

Purpose and Background

Approval of the minutes from the June 27, 2022 City Council Meeting.

Fiscal Impact

Source of Funds: N/A

Cost: N/A

Recurring Cost? (Yes/No): N/A

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

There are no financial implications to this agenda item.

Attachments

Minutes

1. Call The Meeting To Order - Mayor Jeff Gore

The Huber Heights City Council met in a Regular Session on June 27, 2022. Mayor Jeff Gore called the meeting to order at 6:03 p.m.

2. Invocation - Pastor Festus Rucigitaramo Of The Dayton Compassion Church At 6875 Old Troy Pike, Huber Heights, Ohio

3. Pledge Of Allegiance

4. Roll Call

Present: Richard Shaw, Kathleen Baker, Mark Campbell, Nancy Byrge, Glenn Otto, Anita Kitchen, Don Webb, Jeff Gore

Absent: Ed Lyons

Mayor Gore said he did not receive notice from Mr. Lyons that he would not be in attendance. He asked for a motion to excuse Mr. Lyons' absence.

Mr. Otto moved to excuse Mr. Lyons' absence; Mr. Shaw seconded the motion. On a call of the vote, Mr. Campbell, Mrs. Byrge, Mr. Otto, Mrs. Kitchen, and Mr. Shaw voted yea; Ms. Baker and Mr. Webb voted nay. The motion passes 5-2.

5. Approval Of Minutes

- A. City Council Meeting Minutes - June 13, 2022

6. Special Presentations/Announcements

- A. Huber Heights Police Division K9 Recognition Presentations:

- Presentation Of Plaque To Mrs. Teresa Huber In Appreciation Of Her Continued Support Of The Huber Heights Police Division K9 Program.
- Recognition Of Dedicated Service Of K9 Officer Mike Reckner And Retired K9 Adu.
- Recognition Of Dedicated Service Of K9 Officer Cory Siegrist And Retired K9 Eddie.
- Introduction Of K9 Officer Shawn Waler And New K9 Samo.

Mrs. Teresa Huber joined Mayor Gore and Police Chief Mark Lightner for the K9 presentation.

Police Chief Mark Lightner said in his 30 plus years of service, Mrs. Huber has always supported the K9 program and the Police Division. He said Mrs. Huber has supported the division not only financially, but with praise, support, and encouragement. He presented Mrs. Huber with a plaque listing the seven canines she has purchased for the Huber Heights Police Division, in addition to providing funding for the training for the K9 handlers.

Police Chief Mark Lightner presented plaques to the retiring dogs, Adu and Eddie, and the K9 handlers, Officer Mike Reckner and Officer Cory Siegrist. He introduced the newest K9 member, Samo, and Samo's K9 handler, Officer Shawn Waler.

Mrs. Huber said it is a pleasure providing this support for the officers because she and her late husband, Charles, always felt having the K9s helped the whole community.

Mayor Gore thanked Mrs. Huber for her support of the K9 program.

- B. Announcement: The City Is Required To Make A Public Notice And Announcement Of The Final Cost To Property Owners Of The 2022 Sidewalk Program Prior To Beginning The Assessment Process. The 2022 Sidewalk Program Is Complete And The Final Cost For Property Owners Is \$109,674.27.

Clerk of Council Anthony Rodgers read the 2022 Sidewalk Program assessments announcement.

7. Citizens Comments

Clerk of Council Anthony Rodgers said there were no citizens' comments.

8. Citizens Registered to Speak on Agenda Items

Clerk of Council Anthony Rodgers said there were two citizens registered to speak on Item 11-B.

9. City Manager Report

Acting City Manager Katie Knisley said she had no City Manager Report.

10. Pending Business

- A. An Ordinance Amending Certain Sections Of Part One – Administrative Code Of The Huber Heights Codified Ordinances.
(second reading)

Acting City Manager Katie Knisley said this legislation includes technical changes to the Administrative Code of the City Code to make the changes legal to the City's Table of Organization as previously approved by Council.

Mayor Gore said the Council Work Session recommendation was to adopt this item.

Ms. Baker moved to adopt; Mrs. Byrge seconded the motion. On a call of the vote, Mr. Campbell, Mrs. Byrge, Mr. Otto, Mrs. Kitchen, Mr. Webb, Mr. Shaw, and Ms. Baker voted yea; none voted nay. The motion passes 7-0.

11. New Business

CITY COUNCIL

Anthony Rodgers, Clerk of Council

- A. An Ordinance Approving The Editing And Inclusion Of Certain Ordinances And/Or Resolutions As Parts Of The Various Component Codes Of The City Code Of Huber Heights, Ohio; Providing For The Adoption And Publication Of New Matter In The Updated And Revised City Code As Supplement 10; And Repealing Ordinances And Resolutions In Conflict Therewith.
(first reading)

Clerk of Council Anthony Rodgers said this item is a standard ordinance codifying recent legislation passed by City Council. He said Supplement 10 represents legislation from the period of January 1, 2022 through March 31, 2022.

Mayor Gore said this item will be passed to a second reading.

B. A Resolution To Appoint Richard Dzik To The Position Of City Manager Of The City Of Huber Heights.
(first reading)

Mayor Gore said, with Council being one Councilmember short this evening, this item deserves a fair vote with all of the Councilmembers present. He recommended this item be moved to a second reading and asked if there was a majority objection to passing this item to a second reading.

Mr. Otto said he sees no reason to not have the vote tonight. He said the item is on the agenda for a reading. He said he sees no reason to change that process unless the Mayor is suggesting that Council amend the agenda and remove the item.

Mayor Gore said he suggested this item be passed to a second reading.

Mr. Otto objected to passing this item to a second reading.

Mr. Shaw moved to adopt this item.

Mr. Rodgers said the first recommended action - moving the item to a second reading - is the issue that needed to be addressed first.

Mayor Gore said, with no majority objection, this item would be moved on to a second reading.

Ms. Elaina Vimmerstedt said she is not a resident, but she has been following the hiring process for the new City Manager. She urged Council not to appoint the candidate Council is considering and to seriously consider the application of Gerald Smith. She said Mr. Smith has more relevant experience and has not received a vote of no confidence in his role as the candidate being considered by Council. She urged the City Council to provide full transparency to the community and show everyone how the candidates were evaluated. She commented on racism and bias.

Mrs. Andi Otto thanked the Culture and Diversity Citizen Action Commission for last week's events and a commendable task in representing Huber Heights. She said, regarding the City Manager search, it is her hope that another search of applicants is undertaken with a very public Council agreement of how voting procedures will be determined on the selection of the new City Manager. She said on the previous go around, it appeared it had been quite a mess and it caused a significant amount of confusion and separation. She asked Council to think like a resident and a community member and she asked Council if they truly believe the decisions made on the dais serve the residents in the most fair, inclusive, and proper way.

ADMINISTRATION

Katie Knisley, Human Resources Director

C. Energy Aggregation Discussion

Mrs. Knisley said a representative from Energy Alliances, the City's aggregation consultant, was present to discuss the program.

Mr. Rich Surace from Energy Alliances said he watched last week's Council Work Session, and he understands everyone's frustration. He said he was there to discuss for maybe a final time some pricing and options. He said multiple communities throughout the State of Ohio are going back to the standard rates and not starting up or re-signing aggregations. He said the ramp up was so quick and the timing was just

tough to say what was the right thing to do at that time. He said looking at the volatility in the past six months, history has never gotten to this point. He said it is tough to know where it is going. He said there have been questions about other groups and other programs. He said the suppliers that Energy Alliances has asked to bid are part of those programs. He said the company's role is to be the City's consultant for this process and to go to numerous suppliers. He shared handouts with Council showing pricing from multiple suppliers. He said the best rate was through Energy Harbor and he gave his opinions on other programs and the length of contracts. He said the lowest rate is in the 48-month contract, but he would not recommend it as it feels to be too long of a term to lower the price and hang on to it for too long. He said the 36-month contract may be the one to consider. He said he does not love the price, but it is the lowest of the suppliers. He said for the non-all-electric home it would be 19 percent lower than AES, and for the all-electric home, it would be 5 percent lower. He said it offers some certainty for a couple of years. He said there are no termination fees, and people are free to shop and leave the program. He said it is time to make a decision because if Council waits too long it may as well not do anything. He said he hopes Council knows Energy Alliances has tried to do everything it can for this City and he gave examples.

Mayor Gore said the discussion Council had was about stopping the bleeding, protecting from the unknown, and where prices could end up. He said the 36-month contract price of 8.79 cents is the aggregate price and the current rate is 10.9 cents for non-all-electric homes. He said residents are welcome and free to find and choose another company for another rate. He said there are three different out clauses, and he said this program is important enough that the City should spend money on education, letting residents know the pricing, what the City is doing, and what the residents' options are.

Ms. Baker asked, if a decision is made tonight, how long does this program take to begin?

Mr. Surace said this would be a September, 2022 start with a new bill in October, 2022.

Mr. McDonald said, for clarification, if the City signs up, the consultant contract could end in 120 days, but he believes the electric aggregation rate contract has to run through 36 months. He said there is something in the contract that if the City signs up for this program, residents would still get the rate even if the City terminated the consultant contract.

Mr. Surace said, if for any reason, the City decides to make a change, Energy Alliances is still managing the program with the City.

Mr. Campbell said the program could start in September, 2022. He asked when the City could lock in the rate.

Mr. Surace said the rate refreshes every day. He said it could be locked tomorrow. He said he could leave a draft contract with the Law Director. He discussed AES pricing with Mr. Shaw. He explained the City's options for cancelling the contract.

Mrs. Byrge asked about options for cancelling contracts.

Mr. Surace explained there are two contracts, one with Energy Alliances as a consultant and one with Energy Harbor to provide electricity. He said if the City decided to cancel the contract with Energy Alliances, residents would still receive the rates through Energy Harbor until September, 2025.

Mr. Shaw asked Mr. Surace and Mr. Bergman about the percentage of all-electric homes in Huber Heights.

Neither Mr. Surace or Mr. Bergman had the statistics available.

Mr. Shaw said he would be shocked if the number of gas and electric homes in the community were close to 20 percent. He said he did not know how much of a difference it would make and he raised the risk of getting into a 36-month agreement when there are so many unknowns.

Mayor Gore said he would not recommend entering into a contract to save half a cent, but the rate of 8.79 cents is a savings of over 2 cents. He said the all-electric homes will drop to 9.2 cents, but the 8.79 cent rate is still better than what the all-electric homes will have. He said the City is trying to hedge whether prices are going to go up or whether prices are going to go down, and it is a matter of what the residents are going to be feeling about their electric bills and if there is anything the City can do to ease those costs. He said he defers to Council to make a decision. He said a decision needs to be made and inaction is not an option.

Mrs. Kitchen said a lot of homes in Ward 4 are a mix of gas and electric. She said this program could save her area a lot of money.

Mr. Surace said Mr. Shaw's numbers on all-electric homes are on the high side.

Mr. Campbell said he agrees with Mrs. Kitchen. He discussed the two contracts, one with Energy Alliance and one with Energy Harbor. He confirmed residents can opt out without a termination fee. He recommended moving forward with this agreement.

Mr. Surace explained current gas trading and his thoughts on the future of the market.

Ms. Baker said she is in favor of 8.79 cents and she said if people want to opt out, they can. She said at least Council is trying to help residents, and she is willing to do an education piece here, at the Senior Center, the Community Center, or wherever, to educate the residents.

Mr. Webb said the risk is if the bottom drops out of energy prices during this contract. He asked if there is anything in this contract that would prevent City representatives from reaching out to let citizens know they should get out of the contract?

Mr. Surace said there is not. He said there is a slippery slope with education and telling someone to break a contract. He said the City would need to be creative about the education, but the City could not flat out say to leave the contract because obviously the City is under contract at that point.

Mr. Webb said he is in favor of this contract.

Mrs. Byrge said she agrees. She said she had done the apples to apples comparisons, and the rate she has is very close to this 36-month rate.

Mayor Gore asked Mr. Rodgers and Mr. McDonald if it is possible to make a motion and vote, and what would that process be? He asked if the motion would be to direct Mr. McDonald to draft a contract based on tomorrow's refresh rate? He asked what is the likelihood that tomorrow's rate would be at 9.4 cents?

Mr. Surace said, in full transparency, the market was up and he did gross up these numbers to account for that fact. He said he is hoping that gross up is at or higher than what the refresh is.

Mayor Gore asked how Council could enact legislation and a contract to take advantage of a rate quick enough with the rates in front of Council.

Mr. McDonald said whatever company the City contracts with would have a contract, and he would review it to make sure it has opt-out provisions and that type of stuff. He said there is no legislation, so there is nothing to adopt. He said the only thing would be to direct Energy Alliances to lock in a rate and he did not know what is needed to do that.

Mr. Surace said Energy Harbor would want a vote, and he could call Energy Harbor and say Council voted on it and he could leave a contract with Council and check the refresh rates first thing in the morning. He said a lot of communities have used "at or below" language to give the flexibility to know what the ceiling is to give time to work out the contracts.

Mayor Gore confirmed Council would need to come back and pass legislation. He asked if it would be okay to formalize legislation at the next City Council Meeting.

Mr. Surace said the paperwork can be squared away and he can work with the supplier. He said if he told the supplier he would know at a certain time if it is a yes vote, he believes at that point he can get the supplier to hold the rate.

Mr. Rodgers said there will eventually need to be a resolution and a contract. He said Council can give guidance by a motion to direct Energy Alliances as the aggregation consultant to begin this process and to direct the City Manager and the Law Director to work with Energy Alliances in the review and preparation of the documents. He said it would be a motion of intent to move in that direction while the pieces were being put together for a final vote at the July 11, 2022 City Council Meeting.

Mr. Surace said that is enough time, but it is cutting it very close for the September, 2022 start.

Mayor Gore asked for a motion to direct the City Manager and Law Director to begin the negotiation process down that path based on the 36-month rate.

Mrs. Byrge made the motion.

Mr. McDonald asked if Council is going to want this motion with an 8.79 cent rate or a price range.

Mr. Surace said if Council has to wait a couple of weeks, it will be based on the rate on the day the resolution is passed. He said Council can lock in a rate now if there is a signed contract.

Mayor Gore said this matter may need a City Council Special Meeting to lock down a specific rate.

Mr. Shaw said he cannot vote with no contract in hand. He said if a contract can be in the Law Director's hands and circulated to Council and made available for public viewing, he is okay with coming in for a vote. He said next week is too long.

Mayor Gore said tonight is a motion to direct and it is not binding legislation.

Mr. Shaw said at the next Council Work Session he would hope City Staff would have a bulleted plan for an educational program to get out to the residents as soon as possible. He said he would like an educational piece started after the next Council Work Session on proper opt-out procedures and to get some Town Hall meetings scheduled.

Mayor Gore asked Mrs. Knisley to work with Sarah Williams and to provide any materials Mrs. Knisley may have to help Ms. Williams to develop training information, and to also work with Mr. Bergman.

Mr. Rodgers said Wednesday is more feasible for a City Council Special Meeting and allows time for a 24-hour meeting notice. He said at least five Councilmembers would need to be in attendance at the meeting.

Mayor Gore said he would call a City Council Special Meeting on Wednesday, June 29, 2022, at 5:30 p.m. He said there was a motion and a second.

Mr. Bergman said on the City's website under the Engineering section, energy aggregation information is available that spells out how the process works. He said that a link could be placed on the home page to make it more prominent for residents.

Mr. Rodgers said there was a motion and he did not record a second. He said there was no formal vote.

Mr. Shaw seconded the motion. On a call of the vote, Mr. Otto, Mrs. Kitchen, Mr. Webb, Mr. Shaw, Ms. Baker, Mr. Campbell, and Mrs. Byrge voted yea; none voted nay. The motion passes 7-0.

- D. An Ordinance Amending Ordinance No. 2021-O-2511 By Making Supplemental Appropriations For Expenses Of The City Of Huber Heights, Ohio For The Period Beginning January 1, 2022 And Ending December 31, 2022.
(first reading)

Mrs. Knisley said this item is to make supplemental appropriations to the City's budget for expenses totaling \$220,300.00.

Mayor Gore said the Council Work Session recommendation was to waive the second reading and adopt this item.

Mr. Campbell moved to waive; Ms. Baker seconded the motion.

Mayor Gore asked the purpose for waiving the second reading.

Mrs. Knisley said it is probably because of the CAD, as the City is working with a new vendor, CodeRED, and for fuel expenditures.

On a call of the vote, Mrs. Kitchen, Mr. Webb, Mr. Shaw, Ms. Baker, Mr. Campbell, Mrs. Byrge, and Mr. Otto voted yea; none voted nay. The motion passes 7-0.

Mr. Webb moved to adopt; Mrs. Kitchen seconded the motion. On a call of the vote, Mr. Webb, Mr. Shaw, Ms. Baker, Mr. Campbell, Mrs. Byrge, Mr. Otto, and Mrs. Kitchen voted yea; none voted nay. The motion passes 7-0.

- E. A Resolution Amending Resolution No. 2021-R-7065 To Authorize An Increase In The Not To Exceed Amounts For Diesel Fuel And Gasoline.
(first reading)

Mrs. Knisley said this item is to increase the not to exceed amount for diesel fuel and gasoline due to the significant cost increases.

Mrs. Byrge moved to adopt; Ms. Baker seconded the motion. On a call of the vote, Mr. Shaw, Ms. Baker, Mr. Campbell, Mrs. Byrge, Mr. Otto, Mrs. Kitchen, and Mr. Webb voted yea; none voted nay. The motion passes 7-0.

- F. A Resolution Authorizing The City Manager To Enter Into An Agreement To Expand Thomas Cloud Park By Nine Acres.
(first reading)

Mrs. Knisley said this item is to authorize the City Manager to begin acquisition of a nine acre portion of the property adjacent to Thomas Cloud Park for the purpose of increasing the area for recreational activities.

Ms. Baker moved to adopt; Mrs. Byrge seconded the motion. On a call of the vote, Ms. Baker, Mr. Campbell, Mrs. Byrge, Mr. Otto, Mrs. Kitchen, Mr. Webb, and Mr. Shaw voted yea; none voted nay. The motion passes 7-0.

- G. A Resolution Declaring It Necessary To Improve Public Streets And Easements In Section 2 - Phase 5 And Section 7 - Phase 5 By Constructing And Installing Certain Public Infrastructure Improvements, Including Street Improvements, Subbase, Concrete Curb/Gutter With Drainage, Asphalt, Street Lights And Signs, Sidewalk, Survey Work And Engineering, And In Each Case, All Other Costs And Improvements Necessary And Appurtenant Thereto.
(first reading)

Mayor Gore said the Council Work Session recommendation was to adopt this item.

Ms. Baker moved to adopt; Mrs. Byrge seconded the motion.

Mr. Otto said after the discussion last week concerning some of the infrastructure replacement programs and how those programs will have to be reduced due to costs, he thinks this million dollars going to a new development certainly is not as important as taking care of the current infrastructure and he will have to be in opposition.

Mrs. Kitchen said she agrees with Mr. Otto. She said this past week there were over 100 citizens in Ward 4 with water main breaks. She said the money needs to be spent on replacing those lines that the City said would be replaced and not use this money towards this expense.

Mr. Gerald McDonald said the City is not spending any money on this item. He said these assessments are called reverse assessments, where the developer builds the roads and puts in the infrastructure, there are assessments, and as the assessments come in, the City repays the developer. He said the City is not out of pocket for any of the costs.

Mr. Rodgers said the City receives an administrative fee on the assessments as well.

Mr. Otto said the purpose information in the meeting packet states DEC has requested the City provide funding in the amount of \$1,016,000.00, which is \$8,000.00 per lot for the 127 lots proposed for construction.

Mr. Rodgers said the funding is through special assessments that the property owners pay.

Mr. Otto said the recovery of the money is through special assessments, but the City puts the money out.

Mr. McDonald said the legislation itself is a reverse assessment, and he agrees the summary information states otherwise.

Mayor Gore asked Mr. McDonald, if the City is spending any upfront money that otherwise could be spent somewhere else, or is the homeowner paying this assessment, the City is collecting it and adding an administrative fee, and then paying DEC once the City has the money. He said that is his understanding, and if it is not clear, is there something in the resolution that needs to be changed?

Mr. McDonald read Section 10 and he said only as the City receives the money does it pay it.

Mr. Rodgers confirmed for Mr. Campbell that the City now with any special assessments, charges an administrative fee to administer the special assessments on top of the assessment amount.

Mr. Campbell clarified that the homeowner pays the assessment to the County, then the County sends the money to the City, and the City sends the money to the developer and the City charges approximately a 3 percent administration fee.

Mayor Gore said there is no outlay of money the City is paying to anyone.

Mr. Otto said he does not believe that is the case. He explained past situations with assessments.

Mr. McDonald said even though it says that in the summary portion, the actual resolution does not. He explained the developer pays for it up front. He said the older developments were not like that and the City stopped the out-of-pocket special assessments in 2018.

Mr. Webb reread Section 10 and he said this language is pretty clear.

Mr. McDonald said it is also in the petition in Section 2. He said both the ordinance and resolution refer back to the petition, and he read Section 2.

Mayor Gore said he does not disagree with Mr. Otto's assessment of the way these assessments had previously been done, and if the City was being asked to fund the infrastructure up front, he would not support it. He said now it is a different scenario.

Mr. Shaw said he would make a suggestion, as there is an ordinance piece to this item also, that the Councilmembers who made the motion to adopt and the second withdraw those actions and this item could be passed to a second reading to allow more conversation at the Council Work Session. He said it would be important at that time to change the background and information in the meeting packet so everything matched up accordingly.

Mr. Rodgers said that action would be appropriate as the ordinance was supposed to go to a second reading anyhow. He said there was no reason this item could not be delayed to a second reading.

Mayor Gore said before any vote is taken, everyone needs to have full clarity on what is being voted on.

Mr. Rodgers said he is willing to guess that someone copied over an item from an old one and changed the amounts, and that is how it got entered with some of the old language.

Ms. Baker and Mrs. Byrge withdrew the motion to adopt and second.

Mr. Shaw asked if it would be appropriate for the Law Director to research an additional item in the resolution and ordinance that clearly states no City funding from sewer or water revenues will be used.

Mayor Gore said he has no issue with that provision.

Mr. McDonald read Section 10 and confirmed that this language would fit in there or almost anywhere.

Mr. Otto said he prefers this resolution state no City money, not just water and sewer funds.

Mayor Gore said this item will be passed to a second reading and the item will be discussed at the next Council Work Session.

- H. An Ordinance Determining To Proceed With The Improvement Of Public Streets And Easements, In Section 2- Phase 5 And Section 7 - Phase 5 By Constructing And Installing Certain Public Infrastructure Improvements, Including Street Improvements, Subbase, Concrete Curb/Gutter With Drainage, Asphalt, Street Lights And Signs, Sidewalk, Survey Work And Engineering, And In Each Case, All Other Costs And Improvements Necessary And Appurtenant Thereto.
(first reading)

Mayor Gore said the Council Work Session recommendation was to pass this item to a second reading.

Mr. McDonald said this is a companion piece to the Resolution Of Necessity in the previous agenda item and it will be discussed further at the next Council Work Session.

Mayor Gore said this item will be passed to a second reading.

- I. A Resolution Increasing The Not To Exceed Amount And Authorizing The City Manager To Enter Into A Contract For The 2022 Water Main Replacement Project.
(first reading)

Mrs. Knisley said this item authorizes entering into the contract with M&T Excavating for Phases I, II, and III of the 2022 Water Main Replacement Program at a cost not to exceed \$1,850,000.00.

Mayor Gore said the Council Work Session recommendation was to adopt this item.

Mrs. Byrge moved to adopt; Mr. Campbell seconded the motion. On a call of the vote, Mr. Campbell, Mrs. Byrge, Mr. Otto, Mrs. Kitchen, Mr. Webb, Mr. Shaw, and Ms. Baker voted yea; none voted nay. The motion passes 7-0.

- J. A Resolution Setting Forth The Intention To Appropriate Certain Land Adjacent To The City Well Field For Public Purposes.
(first reading)

Mr. McDonald said, as discussed at the Council Work Session, the City is in need of property for wells. He said the City is in discussion with the three property owners of the lots the City needs. He said he has heard from all of the owners who are securing separate appraisals. He said once the owners receive the appraisals, these appraisals will be compared with the City's appraisal. He said in the meantime, the City is moving forward with the process and this item is just the first legislative step, which is the formal indication of the City's intention to appropriate the property if things go bad. He asked that this item be passed tonight, and in July, 2022 there will be an Ordinance To Appropriate, which is the second step, and the third step would be filing an action in court if needed.

Mayor Gore said the Council Work Session recommendation was to adopt this item.

Mr. Shaw moved to adopt; Mrs. Baker seconded the motion. On a call of the vote, Mrs. Byrge, Mr. Otto, Mrs. Kitchen, Mr. Webb, Mr. Shaw, Ms. Baker, and Mr. Campbell voted yea; none voted nay. The motion passes 7-0.

12. City Official Reports and Comments

Mr. Otto said the Culture and Diversity Citizen Action Commission did a great job in putting together some wonderful events, and he is looking forward to seeing those events grow in the future. He said there has been a lot of dust up concerning the City Manager issue. He said he has to agree with a lot of what has been said concerning the City overlooking what on paper has appeared to be the single most qualified candidate in the final four, and the only candidate that has not received the courtesy of an up or down vote. He said he knows the Mayor thinks it is important to have eight members present to vote on this position, but said he thinks it is very important to have at least five Councilmembers in support of a candidate. He said there should be a majority. He said he did not know why there was a push back on any kind of vote. He said it was attempted to bring a vote around for Mr. Smith and that was denied. He said he would like to see that happen again, and if not, he would like to see Council take the recommendation of the Culture and Diversity Citizen Action Commission and establish a proper process for reviewing, grading, and publicly interviewing candidates. He said Council has overlooked a couple of qualified candidates. He said his hope that Council would give Mr. Smith some consideration as he deserves, at least an up or down vote before restarting the process using the guidelines the Culture and Diversity Citizen Action Commission outlined in its letter.

Ms. Baker said she would see everyone Saturday, July 2, 2022 at 10:00 a.m. at the Star Spangled Heights parade.

Mrs. Kitchen thanked the Culture and Diversity Citizen Action Commission and said she had a great time at the events she attended.

Mr. Campbell thanked the Culture and Diversity Citizen Action Commission also and he said he had a great time Saturday at the Cultural Festival. He said he had an opportunity to meet the members of the Turkish Community. He said he met a gentleman named Eldar and his family. He said they demonstrated the kindness and love they have for Huber Heights, and it was inspiring to talk with and meet his

family. He said, after a short period of time, he felt like a part of the family. He said the event was very well attended. He thanked the commission for all the hard work.

13. Executive Session

There was no need for an Executive Session.

14. Adjournment

Mayor Gore adjourned the Regular Session City Council Meeting at 7:45 p.m.

Clerk of Council

Date

Mayor

Date

AI-8520

Minutes B.

City Council Meeting

Meeting Date: 07/11/2022

Approval of Minutes - 6/29/22

Submitted By: Anthony Rodgers

Department: City Council

Council Committee Review?: None

Date(s) of Committee Review: N/A

Audio-Visual Needs: None **Emergency Legislation?:** No

Motion/Ordinance/ N/A

Resolution No.:

Agenda Item Description or Legislation Title

City Council Special Meeting Minutes - June 29, 2022

Purpose and Background

Approval of the minutes from the June 29, 2022 City Council Special Meeting.

Fiscal Impact

Source of Funds: N/A

Cost: N/A

Recurring Cost? (Yes/No): N/A

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

There are no financial implications to this agenda item.

Attachments

Minutes

1. Call The Meeting To Order - Mayor Jeff Gore

The Huber Heights City Council met in a Special Session on June 29, 2022. Mayor Jeff Gore called the meeting to order at 5:30 p.m.

2. Roll Call

Present: Richard Shaw, Kathleen Baker, Mark Campbell, Nancy Byrge,
Glenn Otto, Anita Kitchen, Don Webb, Jeff Gore

Absent: Ed Lyons

3. New Business

ADMINISTRATION

Katie Knisley, Human Resources Director

- A. A Resolution Authorizing The City Manager To Accept An Electric Supplier For The Electricity Aggregation Program.
(first reading)

Acting City Manager Katie Knisley said this item is to discuss the electric aggregation contract for the City's energy aggregation program provided by the City's aggregation consultant, Energy Alliances.

Law Director Gerald McDonald said Rich Surace was kind enough to give him a contract for review and help him understand it. He said the contract was a form contract the company uses with other people and there were some provisions that were not applicable. He said in working with Mr. Surace, he was able to take those provisions out. He said there are some agreed upon changes that are not in the copy of the contract that Council has in hand, but he said those changes will be fixed tomorrow. He reviewed the changes that have been made and he said he would have the final contract available tomorrow. He said the only issue remaining is the price and the term.

Mr. Surace said the final price was 8.59 cents, which is down 2 percent from where the price was earlier in the week. He said the all-electric homes moved to a 7 percent savings, and the non-all-electric homes moved to a 21 percent savings. He said there was a question at the last meeting about the mix of all-electric and not. He said approximately 25 percent of the homes in Huber Heights are all-electric.

Mr. Campbell moved to adopt.

Mayor Gore asked Mr. McDonald if there needs to be a motion to amend the contract.

Mr. McDonald said the legislation states the attached contract will be adopted by Council substantially in the form provided. He said the contract will be substantially in the current form with very minor changes.

Mr. Rodgers said he would suggest that the Exhibit A in the meeting packet be amended and replaced with the amended Exhibit A that was provided to Council at this meeting, and then allow any other changes that need to be made to the contract at the discretion of the Law Director as authorized in the legislation.

Mr. Campbell withdrew his motion to adopt and moved to amend Exhibit A of the legislation; Mrs. Byrge seconded the motion. On a call of the vote, Ms. Baker, Mr. Campbell, Mrs. Byrge, Mr. Otto, Mrs. Kitchen, Mr. Webb, and Mr. Shaw voted yea; none voted nay. The motion passes 7-0.

Mr. Campbell moved to adopt; Ms. Baker seconded the motion.

Mr. Otto thanked Mr. Surace for his work on this program and he asked about the implementation date.

Mr. Surace said enrollments will happen in mid-August, 2022, service will start in September, 2022, and the new rates will show up on the bills in October, 2022.

Mayor Gore said that gives the City time to put together an educational campaign.

Mr. McDonald confirmed with Mr. Surace that Harbor Energy through Energy Alliances will handle the opt-out letters.

On a call of the vote, Mr. Campbell, Mrs. Byrge, Mr. Otto, Mrs. Kitchen, Mr. Webb, Mr. Shaw, and Ms. Baker voted yea; none voted nay. The motion passes 7-0.

4. **Adjournment**

Mayor Gore adjourned the Special Session City Council Meeting at 5:36 p.m.

Clerk of Council

Date

Mayor

Date

AI-8499

Pending Business A.

City Council Meeting

City Council

Meeting Date: 07/11/2022

City Code - Supplement 10 - Adopting Ordinance

Submitted By: Anthony Rodgers

Department: City Council

Council Committee Review?: Council Work Session

Date(s) of Committee Review: 06/21/2022

Audio-Visual Needs: None

Emergency Legislation?: No

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

An Ordinance Approving The Editing And Inclusion Of Certain Ordinances And/Or Resolutions As Parts Of The Various Component Codes Of The City Code Of Huber Heights, Ohio; Providing For The Adoption And Publication Of New Matter In The Updated And Revised City Code As Supplement 10; And Repealing Ordinances And Resolutions In Conflict Therewith.
(second reading)

Purpose and Background

This ordinance is to adopt Supplement 10 to the City Code for the period of January 1, 2022 to March 31, 2022. Appropriate legal notice of this ordinance has been advertised as required by the Huber Heights City Charter.

Fiscal Impact

Source of Funds: N/A

Cost: N/A

Recurring Cost? (Yes/No): N/A

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

Attachments

Ordinance

CITY OF HUBER HEIGHTS
STATE OF OHIO

ORDINANCE NO. 2022-O-

APPROVING THE EDITING AND INCLUSION OF CERTAIN ORDINANCES AND/OR RESOLUTIONS AS PARTS OF THE VARIOUS COMPONENT CODES OF THE CITY CODE OF HUBER HEIGHTS, OHIO; PROVIDING FOR THE ADOPTION AND PUBLICATION OF NEW MATTER IN THE UPDATED AND REVISED CITY CODE AS SUPPLEMENT 10; AND REPEALING ORDINANCES AND RESOLUTIONS IN CONFLICT THEREWITH.

WHEREAS, Municipal Code Corporation has completed its updating and revision of the City Code of Huber Heights, Ohio within Supplement 10; and

WHEREAS, certain provisions within the City Code of Huber Heights, Ohio were changed to conform with current State law as required by the Ohio Constitution; and

WHEREAS, various resolutions and/or ordinances of a general and permanent nature have been passed by the City Council which should be included in the City Code of Huber Heights, Ohio.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Huber Heights, Ohio that:

Section 1. The resolutions and/or ordinances of the City of Huber Heights, Ohio, of a general and permanent nature, as edited, revised, codified and re-codified, rearranged and consolidated into component codes, titles, chapters and sections within Supplement 10 to the City Code of Huber Heights, Ohio for the period of January 1, 2022 to March 31, 2022, a copy of which is available for copying and inspection in the Office of the Clerk of Council, and incorporated herein by this reference, are hereby approved and adopted.

Section 2. The provisions within the City of Huber Heights Code that mirror provisions as contained in the Ohio Revised Code as set forth within Supplement 10 to the City Code of Huber Heights, Ohio for the period of January 1, 2022 to March 31, 2022, a copy of which is available for copying and inspection in the Office of the Clerk of Council, and incorporated herein by this reference, are hereby approved and adopted to conform with current State law.

Section 3. All ordinances and resolutions or parts thereof that are in conflict or inconsistent with any provision of the new matter adopted in Section 1 or 2 of this ordinance are hereby repealed as of the effective date of this ordinance except as follows:

(a) The enactment of such sections shall not be construed to affect a right or liability accrued or incurred under any legislative provision prior to the effective date of such enactment, or an action or proceeding for the enforcement of such right or liability. Such enactment shall not be construed to relieve any person from punishment for an act committed in violation of any such legislative provision, nor to affect an indictment or prosecution therefor. For such purposes, any such legislative provision shall continue in full force notwithstanding its repeal for the purposes of revision and recodification.

(b) The repeal provided above shall not affect any legislation enacted subsequent to March 31, 2022.

Section 4. Pursuant to Section 5.08(B) of the Huber Heights City Charter, the Clerk of Council shall cause a notice of this proposed adopting Ordinance to be published one time in a newspaper of general circulation in the City at least seven days prior to adoption and no further publication shall be necessary. Such publication shall constitute sufficient notice of all new material contained therein.

Section 5. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were in meetings open to the public and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 6. This Ordinance shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the _____ day of _____, 2022;
_____ Yeas; _____ Nays.

Effective Date:

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

AI-8501

**Pending Business B.
City Manager**

City Council Meeting

Meeting Date: 07/11/2022

Carriage Trails - Special Assessments - Sections 2-5/7-5 - Resolution Of Necessity

Submitted By: Anthony Rodgers

Department: City Council

Council Committee Review?: Council Work
Session

Date(s) of Committee Review: 06/21/2022

Audio-Visual Needs: None

Emergency Legislation?: No

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

A Resolution Declaring It Necessary To Improve Public Streets And Easements In Section 2 - Phase 5 And Section 7 - Phase 5 By Constructing And Installing Certain Public Infrastructure Improvements, Including Street Improvements, Subbase, Concrete Curb/Gutter With Drainage, Asphalt, Street Lights And Signs, Sidewalk, Survey Work And Engineering, And In Each Case, All Other Costs And Improvements Necessary And Appurtenant Thereto.
(second reading)

Purpose and Background

DEC Land Company has proposed advance funding a portion of the costs of constructing the public streets within Sections 2-5 and 7-5 of the Carriage Trails development through the use of special assessments. DEC has proposed that they will provide all funding, in advance, in the amount of \$1,016,000, which is \$8,000 per lot for the 127 lots proposed for construction. DEC has asked the City to assess each of the 127 newly created lots \$650 per lot per year for 25 years, plus interest at the current bond rate at the time of assessment, and a 3% administrative fee charged by the City. Upon collection of the assessments, the City will reimburse DEC annually for the amount collected less the City and County administrative fees. In order to accomplish this, the City will need to pass a Resolution Of Necessity and an Ordinance To Proceed with the improvement - both of which are included in the meeting packet for Council's consideration. This item is the Resolution Of Necessity.

There is an amended resolution attached for consideration by the City Council at the second reading of this legislation (see attached).

Fiscal Impact

Source of Funds: N/A

Cost: N/A

Recurring Cost? (Yes/No): N/A

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

Attachments

Resolution

Resolution - Amended

Exhibit A

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2022-R-

DECLARING IT NECESSARY TO IMPROVE PUBLIC STREETS AND EASEMENTS IN SECTION 2 - PHASE 5 AND SECTION 7 - PHASE 5 BY CONSTRUCTING AND INSTALLING CERTAIN PUBLIC INFRASTRUCTURE IMPROVEMENTS, INCLUDING STREET IMPROVEMENTS, SUBBASE, CONCRETE CURB/GUTTER WITH DRAINAGE, ASPHALT, STREET LIGHTS AND SIGNS, SIDEWALK, SURVEY WORK AND ENGINEERING, AND IN EACH CASE, ALL OTHER COSTS AND IMPROVEMENTS NECESSARY AND APPURTENANT THERETO.

WHEREAS, the owner of 100 percent of the lots and lands to be assessed for the Improvement (described in Section 2) has petitioned this Council (that Petition for Special Assessments and Affidavit is attached hereto as Exhibit A and incorporated herein by reference and is referred to herein as the "Petition") for the construction of the Improvement (as defined in Section 2), and further, that there be assessed against the real property described in the Petition certain costs of the Improvement; and

WHEREAS, this Council has heretofore directed that the plans, specifications, profiles and estimate of cost be prepared for the Improvement; and

WHEREAS, this Council has determined to adopt this Resolution to accept the Petition and approve the plans, specifications, profiles and estimate of cost of the Improvement, as prepared by the Developer in conjunction with IBI Group Inc. (f/k/a ME Companies Inc.), and to further provide for such other terms and provisions relating to the Improvement as are set forth in this Resolution.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio, that:

Section 1. This Council hereby finds that the Petition has been signed by the owners of 100 percent of the lots and lands to be assessed for the Improvement.

Section 2. It is declared necessary to improve public streets and easements by constructing and installing on the Property (as described in the Petition) excavating, grading, paving, constructing and installing street improvements, including subbase, concrete curb/gutter with drainage, asphalt, street lights and signs, sidewalk, survey work and engineering, and in each case, all other costs and improvements necessary and appurtenant thereto (collectively, the "Improvement").

Section 3. The plans, specifications, profiles and estimate of cost of the Improvement, which have been prepared by the Developer and IBI Group Inc., and which are now on file in the Office of the Clerk of Council, are approved. The Improvement shall be made in accordance with, and the grade of the Improvement and of any street shall be the grade as shown on, the plans, specifications and profiles for the Improvement.

Section 4. This Council finds and determines that (a) the Improvement is conducive to the public health, convenience and welfare of this City and the inhabitants thereof and (b) the lots and lands to be assessed as described in Section 9 hereof and in the Petition are specially benefited by the Improvement.

Section 5. This Council hereby accepts the Petition. Subject to the provisions of and limitations set forth in the Petition, \$1,016,000.00 of the costs of the Improvement (plus interest on the costs of the Improvement to be computed in accordance with Sections 1 and 2 of the Petition) shall be assessed against the real property described in and pursuant to the Petition. Any additional costs of the Improvement shall be paid by the landowner.

Section 6. The cost of the Improvement shall include the cost of preliminary and other surveys, plans, specifications, profiles and estimates and of printing, serving and publishing notices, resolutions and ordinances, the amount or any damages resulting from the Improvement and the interest thereon, the costs incurred in connection with the preparation, levy and collection of the special assessments, the cost of purchasing, appropriating, and otherwise acquiring any real estate or interest therein required for the Improvement, expenses of legal services including obtaining legal

opinions, cost of labor and material and interest on securities issued in anticipation of the levy and collection of the special assessments, together with all necessary expenditures.

Section 7. The City Engineer is authorized and directed to prepare and file, or cause to be prepared and filed, in the Office of the Clerk of Council the estimated special assessments of the cost of the Improvement described in this Resolution. Those estimated special assessments shall be based upon the estimate of cost of the Improvement now on file in the Office of the Clerk of Council and shall be prepared pursuant to the provisions of this Resolution and the Petition.

Section 8. The special assessments to be levied shall be paid in twenty-five (25) annual installments of \$650.00 (plus any administrative or similar collection or processing fee) for Sections 2-5 and 7-5 (each annual installment to be payable semi-annually at the time real estate taxes in Miami County, Ohio are payable), together with interest on the unpaid principal amount of each special assessment as provided for by law and in accordance with the Petition and the ordinance levying the final special assessments.

Section 9. This City has reviewed the plans and specifications and the associated cost estimates for the proposed Improvements as detailed in the Petition and this Council finds and determines that the average useful life of the Improvements is at least 28 years.

Section 10. The City shall directly reimburse the Developer as and when the special assessments are collected for the Developer's costs and interest thereon. The City shall pay the Developer for a portion of the Improvement as set forth in the Petition, but only as and when the City receives these funds from the assessments described in the Petition. The remainder of the entire cost of the Improvement, after application of the special assessments, shall be paid by the landowner. The City assumes no obligation beyond the transfer of the assessments to the Developer following completion of the Improvements.

Section 11. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were in meetings open to the public and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 12. This Resolution shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the _____ day of _____, 2022.
_____ Yeas; _____ Nays.

Effective Date:

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

CERTIFICATE

The undersigned, Clerk of Council of the City of Huber Heights, Ohio, hereby certifies that the foregoing is a true and correct copy of Resolution No. 2022-R-_____ adopted by the Council of the City of Huber Heights, on _____, 2022.

Clerk of Council

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2022-R-

DECLARING IT NECESSARY TO IMPROVE PUBLIC STREETS AND EASEMENTS IN SECTION 2 - PHASE 5 AND SECTION 7 - PHASE 5 BY CONSTRUCTING AND INSTALLING CERTAIN PUBLIC INFRASTRUCTURE IMPROVEMENTS, INCLUDING STREET IMPROVEMENTS, SUBBASE, CONCRETE CURB/GUTTER WITH DRAINAGE, ASPHALT, STREET LIGHTS AND SIGNS, SIDEWALK, SURVEY WORK AND ENGINEERING, AND IN EACH CASE, ALL OTHER COSTS AND IMPROVEMENTS NECESSARY AND APPURTENANT THERETO.

WHEREAS, the owner of 100 percent of the lots and lands to be assessed for the Improvement (described in Section 2) has petitioned this Council (that Petition for Special Assessments and Affidavit is attached hereto as Exhibit A and incorporated herein by reference and is referred to herein as the "Petition") for the construction of the Improvement (as defined in Section 2), and further, that there be assessed against the real property described in the Petition certain costs of the Improvement; and

WHEREAS, this Council has heretofore directed that the plans, specifications, profiles and estimate of cost be prepared for the Improvement; and

WHEREAS, this Council has determined to adopt this Resolution to accept the Petition and approve the plans, specifications, profiles and estimate of cost of the Improvement, as prepared by the Developer in conjunction with IBI Group Inc. (f/k/a ME Companies Inc.), and to further provide for such other terms and provisions relating to the Improvement as are set forth in this Resolution.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio, that:

Section 1. This Council hereby finds that the Petition has been signed by the owners of 100 percent of the lots and lands to be assessed for the Improvement.

Section 2. It is declared necessary to improve public streets and easements by constructing and installing on the Property (as described in the Petition) excavating, grading, paving, constructing and installing street improvements, including subbase, concrete curb/gutter with drainage, asphalt, street lights and signs, sidewalk, survey work and engineering, and in each case, all other costs and improvements necessary and appurtenant thereto (collectively, the "Improvement").

Section 3. The plans, specifications, profiles and estimate of cost of the Improvement, which have been prepared by the Developer and IBI Group Inc., and which are now on file in the Office of the Clerk of Council, are approved. The Improvement shall be made by the developer, at developer's cost, in accordance with, and the grade of the Improvement and of any street shall be the grade as shown on, the plans, specifications and profiles for the Improvement.

Section 4. This Council finds and determines that (a) the Improvement is conducive to the public health, convenience and welfare of this City and the inhabitants thereof and (b) the lots and lands to be assessed as described in Section 9 hereof and in the Petition are specially benefited by the Improvement.

Section 5. This Council hereby accepts the Petition. Subject to the provisions of and limitations set forth in the Petition, \$1,016,000.00 of the costs of the Improvement (plus interest on the costs of the Improvement to be computed in accordance with Sections 1 and 2 of the Petition) shall be assessed against the real property described in and pursuant to the Petition. Any additional costs of the Improvement shall be paid by the landowner.

Section 6. The cost of the Improvement shall include the cost of preliminary and other surveys, plans, specifications, profiles and estimates and of printing, serving and publishing notices, resolutions and ordinances, the amount or any damages resulting from the Improvement and the interest thereon, the costs incurred in connection with the preparation, levy and collection of the special assessments, the cost of purchasing, appropriating, and otherwise acquiring any real estate or interest therein required for the Improvement, expenses of legal services including obtaining legal

opinions, cost of labor and material and interest on securities issued in anticipation of the levy and collection of the special assessments, together with all necessary expenditures.

Section 7. The City Engineer is authorized and directed to prepare and file, or cause to be prepared and filed, in the Office of the Clerk of Council the estimated special assessments of the cost of the Improvement described in this Resolution. Those estimated special assessments shall be based upon the estimate of cost of the Improvement now on file in the Office of the Clerk of Council and shall be prepared pursuant to the provisions of this Resolution and the Petition.

Section 8. The special assessments to be levied shall be paid in twenty-five (25) annual installments of \$650.00 (plus any administrative or similar collection or processing fee) for Sections 2-5 and 7-5 (each annual installment to be payable semi-annually at the time real estate taxes in Miami County, Ohio are payable), together with interest on the unpaid principal amount of each special assessment as provided for by law and in accordance with the Petition and the ordinance levying the final special assessments.

Section 9. This City has reviewed the plans and specifications and the associated cost estimates for the proposed Improvements as detailed in the Petition and this Council finds and determines that the average useful life of the Improvements is at least 28 years.

Section 10. The City shall directly reimburse the Developer as and when the special assessments are collected, excluding therefrom any City and County administrative or similar collection or processing fees for the Developer's costs and interest thereon. The City shall pay the Developer for a portion of the Improvement as set forth in the Petition, but only as and when the City receives these funds from the assessments described in the Petition. Other than the reimbursement by collected special assessments, no City funds shall be used towards the improvements being assessed. The remainder of the entire cost of the Improvement, after application of the special assessments, shall be paid by the landowner. The City assumes no obligation beyond the transfer of the assessments to the Developer following completion of the Improvements.

Section 11. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were in meetings open to the public and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 12. This Resolution shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the _____ day of _____, 2022.
____ Yeas; ____ Nays.

Effective Date:

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

CERTIFICATE

The undersigned, Clerk of Council of the City of Huber Heights, Ohio, hereby certifies that the foregoing is a true and correct copy of Resolution No. 2022-R-_____ adopted by the Council of the City of Huber Heights, on _____, 2022.

Clerk of Council

EXHIBIT A

PETITION FOR SPECIAL ASSESSMENTS AND AFFIDAVIT

May 11, 2022

To the City Council of the City of Huber Heights, Ohio:

WHEREAS, DEC Land Co. I LLC (the "*Property Owner*" and the "*Developer*"), represents that it owns certain real property (which real property represents 100% of the real property described and depicted in ATTACHMENTS A-1 and A-2 attached hereto and by reference made a part hereof and referred to herein as the "*Property*"), all of which Property is located within the City of Huber Heights, Ohio (the "*City*"); and

WHEREAS, the Property Owner acknowledges that, in connection with the development of the Property, the Property will benefit from the construction and installation on the Property of certain public infrastructure improvements, including but not limited to, street improvements, including subbase, concrete curb/gutter with drainage, asphalt, street lights and signs, sidewalk, survey work and engineering, and in each case, all other costs and improvements necessary and appurtenant thereto, to the special benefit of the Property and collectively referred to herein as the "*Improvement*"; and

WHEREAS, the Property Owner hereby petitions the City for the construction of the Improvement and further that a portion of the costs of the Improvement be assessed against the Property in accordance with this Petition; and

WHEREAS, the Property Owner acknowledges and agrees that the Property includes all of the real property to be assessed pursuant to this Petition, all of which Property will receive special benefits from the construction of the Improvement; and

WHEREAS, the Property Owner further deposes and states that this Petition and actions provided for herein impose burdens and obligations upon the Property and provide for special assessments to be levied upon the Property in accordance with this Petition, and that this Petition is available for inspection at the office of the Clerk of City Council; and

WHEREAS, the Property Owner requests that 100% of the special assessments be deferred as provided for herein;

NOW, THEREFORE, the Property Owner hereby petitions the City Council of the City of Huber Heights, Ohio as follows:

1. *Special Assessments.* The Property Owner states that it owns 100% of the Property. Acting pursuant to Chapter 727, Ohio Revised Code, the Property Owner petitions City Council for the construction of the Improvement, and agrees that the

Property will receive special benefits from the construction of the Improvement, and respectfully requests that \$8,000 per lot completed plus interest thereon as set forth below for Sections 2, Phase 5 ("Section 2-5") and Section 7, Phase 5 ("Section 7-5"), which represents the costs of the Improvement, including without limitation the compensation, damages and expenses of the Improvement, be assessed upon the Property. The Property Owner anticipates that the Property will be divided into one hundred twenty-seven (127) lots, consisting of sixty-two (62) lots for Section 2-5 and sixty-five (65) lots for Section 7-5, and that the actual costs of the Improvement will be apportioned equally among all of the lots included within the Property (with an apportionment of \$8,000 plus interest per lot for Section 2-5 and Section 7-5). Unless otherwise agreed to by the Property Owner and the City, to the extent the Property Owner, or its grantees or other successors with respect to the Property, does not pay the special assessments as levied in the time period provided for by Ohio law, the Property Owner acknowledges and agrees that the City may exercise any and all rights for the collection of unpaid special assessments in accordance with Ohio law and that the City may increase the unpaid assessments by an amount equal to the actual costs charged by Miami County to administer and collect the special assessments and if applicable, any related interest and other expenses.

2. *Construction and Payment of Costs of the Improvement.* (a) The Developer shall construct the Improvement in a manner consistent with the plans and specifications for such Improvement which shall have been approved by the City, (b) the Developer shall obtain performance and payment bonds meeting the requirements of Sections 153.54 and 153.57 of the Ohio Revised Code guaranteeing the completion of the construction of the Improvement and the payment of subcontractors, material providers and laborers from all of Developer's subcontractors and material suppliers, (c) the Developer shall pay prevailing wage to laborers as determined by the Ohio Department of Commerce under Chapter 4115 of the Ohio Revised Code in connection with the construction of the Improvement, (d) the Developer shall be responsible for paying the actual costs of such Improvement prior to the time such Improvement is dedicated to and accepted by the City, (e) the Developer shall provide warranties and guarantees with respect to the workmanship of the Improvement and the correction of deficiencies, (f) the City shall, promptly following completion of construction of the Improvement and dedication to and acceptance by the City of the Improvement, for Section 2-5 and Section 7-5, reimburse the Developer from the special assessments described in paragraph 1 above as those payments are collected (twice annually) at an annual interest rate of 6.5% (the "Interest") on any unpaid balance of the Improvement costs to provide the Developer reimbursement for the Improvement in an amount equal to the lesser of (i) \$8,000 per platted lot plus Interest or (ii) 100% of the actual cost of construction of the Improvement plus Interest thereon; *provided* that the amount of such payment shall be specially assessed pursuant to this Petition.

3. *Duration of Special Assessments.* The Property Owner hereby confirms that the special assessments and the interest thereon be payable in twenty-five (25) annual installments of \$650 (plus any administrative or similar collection or processing fee) for Section 2-5 and Section 7-5 (each annual installment to be payable semi-annually at the

time real property taxes in Miami County, Ohio are payable). The Property Owner hereby requests that the special assessments and interest thereon be certified to the County Auditor in order that the first installment of special assessments shall be due not later than the earliest of (a) the first date on which taxes and special assessments are due and payable in the first calendar year next following the first September 1 next following conveyance of the Property by the Property Owner to another entity or (b) the first date for 2026 on which taxes and special assessments are due and payable. Following the deferment, the special assessments will be collected in twenty-five (25) annual installments as described in this paragraph 3.

4. *Payment of Special Assessments.* In consideration of the Public Improvement, the Property Owner, for itself and its grantees or other successors with respect to the Property, agrees to pay promptly all special assessments levied against the lots and lands which collectively constitute the Property as they become due, and agrees that the determination by the Council of the special assessments in accordance with the terms hereof will be final, conclusive and binding upon the Property Owner and the Property. In further consideration of the Improvement, the Property Owner covenants and agrees to disclose, upon the transfer of the Property or any portion of the Property to be specially assessed for the actual costs of the Improvement, in the deed to the transferee the existence of any outstanding special assessment for the Improvement and to require that transferee covenant to disclose that information in any subsequent deed to any transferee so long as such special assessments remain unpaid. As a condition to each subsequent transfer while such special assessments remain unpaid, the Property Owner further covenants and agrees to provide expressly in the deed to any transferee (a) for the acquisition by such transferee of the Property subject to any outstanding special assessment and such transferee's assumption of responsibility for payment thereof and for the waiver by the transferee of any rights that the Property Owner has waived pursuant to this Petition and (b) the requirement that each transferee from time to time of the Property covenant to include in the deed to any subsequent transferee the conditions described in clause (a) so long as such special assessments remain unpaid.

5. *Action by City Council.* The Property Owner, for its successors and assigns, further consents and requests that all legislation required to be enacted to permit the Improvement to commence immediately be enacted at one City Council meeting.

6. *Waivers.* The Property Owner consents and requests that these special assessments be levied and collected without limitation as to the value of the Property, and waives all the following relating to the Improvement and the special assessments:

(a) any and all rights, benefits and privileges specified by Sections 727.03 and 727.06 of the Revised Code or by any other provision restricting these special assessments to 33-1/3% of the actual improved value of the lots and lands as enhanced by the Improvement to be made;

(b) any and all rights, benefits and privileges specified by Section 727.04 of the Revised Code or by any other provision Limiting special assessments for re-improvement when a special assessment has been levied and paid previously;

(c) any and all damages or claims for damages of whatsoever kind, character or description resulting from the Improvement or the making of the Improvement, including but not limited to all rights, benefits and privileges specified by Sections 727.18 through 727.22 and Section 727.43 of the Revised Code;

(d) any and all resolutions, ordinances and notices required for the making of the Improvement, including the notice of the adoption of the resolution of necessity and the filing of estimated special assessments, the equalization of the estimated special assessments, any increase in the cost of labor and materials over the estimated cost, the passage of the assessing ordinance, and the right to apply for deferment of the special assessments pursuant to Section 727.251 of the Revised Code, and including, but not limited to, notices authorized and required by Sections 727.13, 727.16, 727.17, 727.24 and 727.26 of the Revised Code;

(e) any limitation on the addition of interest to the special assessments specified by Section 727.301 of the Revised Code;

(f) any limitation or restriction on the levy and collection of special assessments against the Property for the Improvement as specified in Section 929.03 of the Revised Code; and

(g) any and all irregularities and defects in the proceedings.

7. *Notice.* Notice may be provided to the Property Owner at:

DEC Land Co. I, LLC
5131 Post Road, Suite 101
Dublin, Ohio 43017
Attention: William W. Keethler II
President of the Managing Member

[signature page follows]

IN WITNESS WHEREOF, the Property Owner has caused this Petition to be duly executed in its name, all as of the date hereinbefore written.

SIGNED AND ACKNOWLEDGED
IN THE PRESENCE OF:

DEC LAND CO. I LLC

By: Carriage Trails at The Heights LLC

Its: Managing Member

By: [Signature]

Printed: William W. Keethler II

Title: President

[Signature]
Witness
[Signature]
Witness

STATE OF OHIO

SS.

COUNTY OF FRANKLIN

The foregoing instrument was sworn to and subscribed before me this 11th day of May, 2022 by William W. Keethler, President of Carriage Trails at The Heights LLC, an Ohio limited liability company and Managing Member of DEC Land Co. I, LLC, the authorized representative of DEC Land Co. I LLC. This is a jurat certificate; an oath or affirmation was administered to the signer with regard to this notarial act.



CASSANDRA L. RIEHLE
Notary Public, State of Ohio
My Commission Expires 08-16-2025

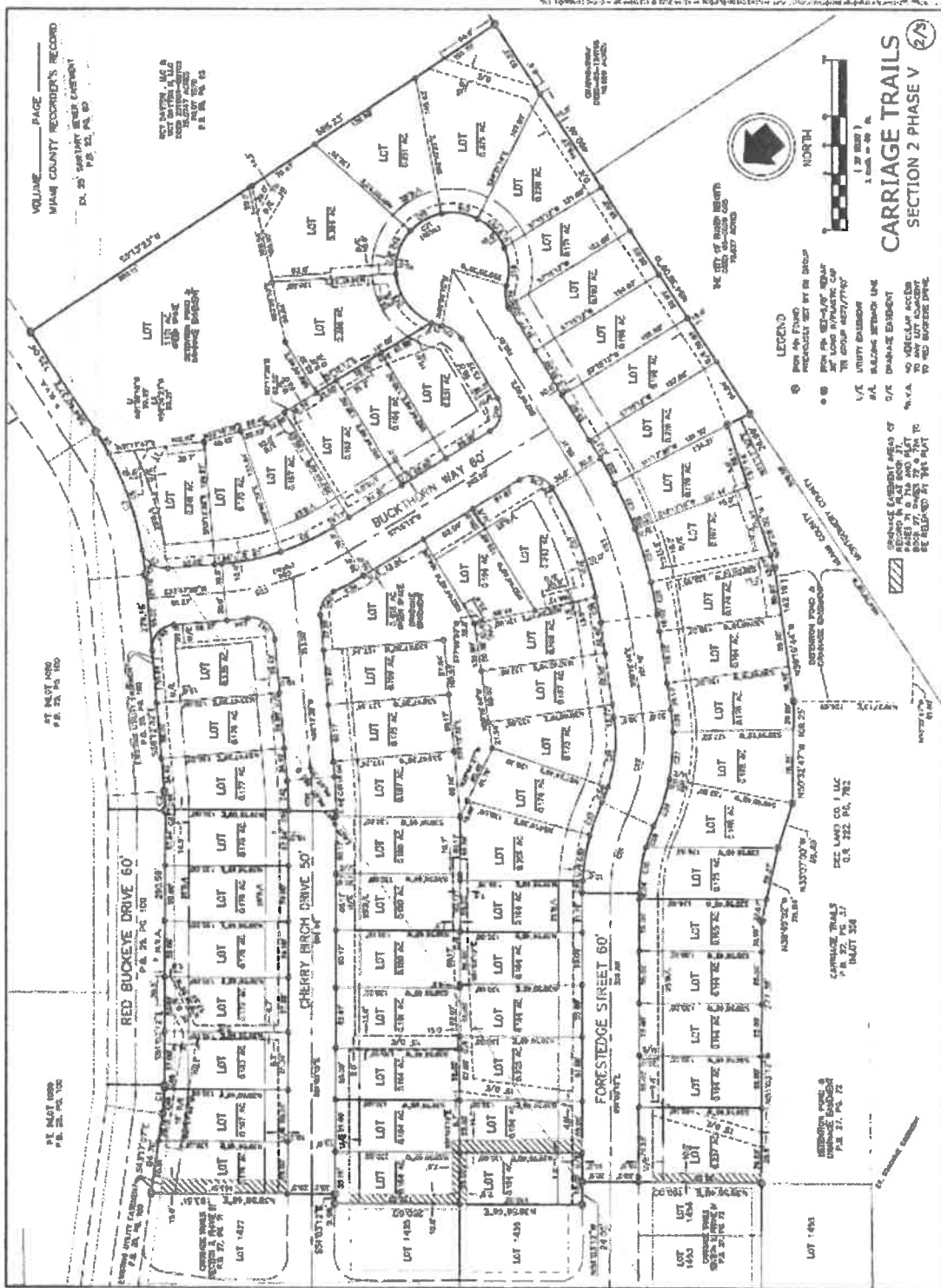
[Signature]
Notary Public

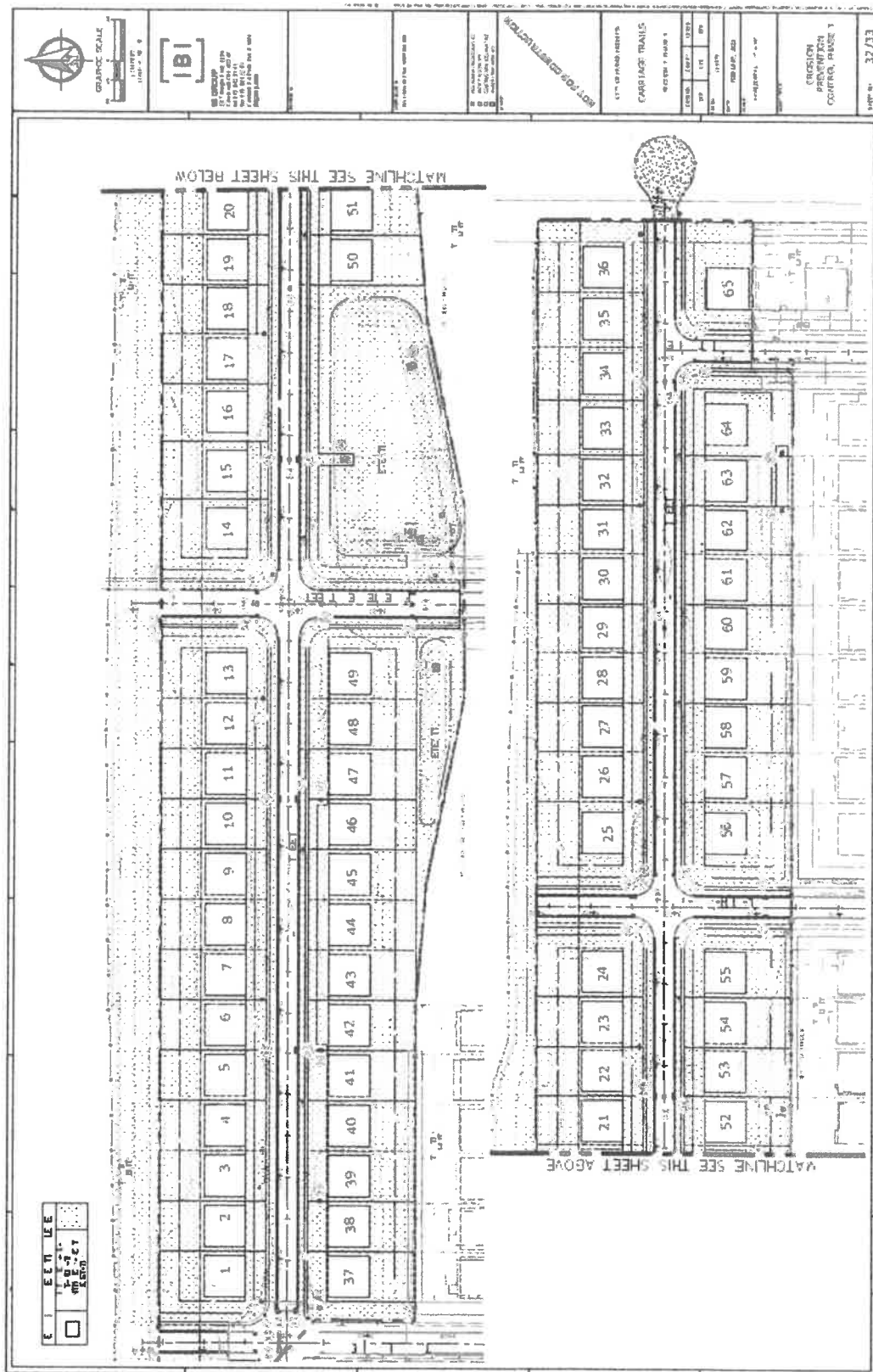
ATTACHMENT A-1

Description of the Property

Approximately 16.325 acres in Section 2-5 being lots 1 through 62; and approximately 17.34 acres in Section 7-5 being lots 1-65 of Carriage Trails, in the City of Huber Heights, Miami County, Ohio, as shown on Attachment A-2 attached hereto.

ATTACHMENT A-2
Depiction of the Property





AI-8502

Pending Business C.

City Council Meeting

City Manager

Meeting Date: 07/11/2022

Carriage Trails Sections 2-5/7-5 - Special Assessment Request - Ordinance To Proceed

Submitted By: Anthony Rodgers

Department: City Council

Council Committee Review?: Council Work Session

Date(s) of Committee Review: 06/21/2022

Audio-Visual Needs: None

Emergency Legislation?: No

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

An Ordinance Determining To Proceed With The Improvement Of Public Streets And Easements In Section 2 - Phase 5 And Section 7 - Phase 5 By Constructing And Installing Certain Public Infrastructure Improvements, Including Street Improvements, Subbase, Concrete Curb/Gutter With Drainage, Asphalt, Street Lights And Signs, Sidewalk, Survey Work And Engineering, And In Each Case, All Other Costs And Improvements Necessary And Appurtenant Thereto.
(second reading)

Purpose and Background

DEC Land Company has proposed advance funding a portion of the costs of constructing the public streets within Sections 2-5 and 7-5 of the Carriage Trails development through the use of special assessments. DEC has proposed that they will provide all funding, in advance, in the amount of \$1,016,000, which is \$8,000 per lot for the 127 lots proposed for construction. DEC has asked the City to assess each of the 127 newly created lots \$650 per lot per year for 25 years, plus interest at the current bond rate at the time of assessment, and a 3% administrative fee charged by the City. Upon collection of the assessments, the City will reimburse DEC annually for the amount collected less the City and County administrative fees. In order to accomplish this, the City will need to pass a Resolution Of Necessity and an Ordinance To Proceed with the improvement - both of which are included in the meeting packet for Council's consideration. This item is the Ordinance To Proceed.

There is an amended ordinance attached for consideration by the City Council at the second reading of this legislation (see attached).

Fiscal Impact

Source of Funds: N/A

Cost: N/A

Recurring Cost? (Yes/No): N/A

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

Attachments

Ordinance

Ordinance - Amended

CITY OF HUBER HEIGHTS
STATE OF OHIO

ORDINANCE NO. 2022-O-

DETERMINING TO PROCEED WITH THE IMPROVEMENT OF PUBLIC STREETS AND EASEMENTS IN SECTION 2 - PHASE 5 AND SECTION 7 - PHASE 5 BY CONSTRUCTING AND INSTALLING CERTAIN PUBLIC INFRASTRUCTURE IMPROVEMENTS, INCLUDING STREET IMPROVEMENTS, SUBBASE, CONCRETE CURB/GUTTER WITH DRAINAGE, ASPHALT, STREET LIGHTS AND SIGNS, SIDEWALK, SURVEY WORK AND ENGINEERING, AND IN EACH CASE, ALL OTHER COSTS AND IMPROVEMENTS NECESSARY AND APPURTENANT THERETO.

WHEREAS, this Council has adopted Resolution No. 2022-R-____ on _____, 2022 (the “*Resolution of Necessity*”), declaring the necessity of making the Improvement described in Section 1.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Huber Heights, Ohio, that:

Section 1. It is determined to proceed with the improvement of public streets and easements by constructing and installing on the Property (as described in the Petition) certain public infrastructure improvements, including street improvements, subbase, concrete curb/gutter with drainage, asphalt, street lights and signs, sidewalk, survey work and engineering, and in each case, all other costs and improvements necessary and appurtenant thereto (collectively, the “*Improvement*”) more fully described in the plans and specifications on file in the Office of the Clerk of Council.

Section 2. The Improvement shall be made in accordance with the provisions of the Resolution of Necessity (including the Petition referenced therein and attached thereto) and with the plans, specifications, profiles and estimate of cost previously approved and now on file in the Office of the Clerk of Council.

Section 3. The portion of the cost of the Improvement to be assessed in accordance with the Resolution of Necessity and the related Petition shall be assessed in the manner and pursuant to the payment schedule set forth, and on the lots and lands described, in that Resolution and the related Petition.

Section 4. The City shall pay the Developer for a portion of the Improvement as set forth in the Petition, but only as and when the City receives these funds from the assessments described in the Petition. All costs shall be paid by the Developer or the landowner, and the City assumes no obligation beyond the transfer of the assessments it receives to the Developer following completion of the Improvements.

Section 5. All claims for damages resulting from the Improvement that have been or are legally filed shall be inquired into after completion of the Improvement, and the City Attorney is authorized and directed to institute legal proceedings in a court of competent jurisdiction to inquire into those claims.

Section 6. The estimated special assessments previously prepared and filed in the Office of the Clerk of Council and in accordance with the Resolution of Necessity and the related Petition are adopted.

Section 7. The Clerk of Council shall deliver a certificate copy of this Ordinance to the County Auditor of Miami County, Ohio, within 15 days after its passage.

Section 8. Subject to the provisions of Section 727.24 of the Revised Code, the City Manager is authorized and directed to work with the Developer to proceed with contracting for the Improvement, and the Improvement shall be paid for by the Developer, which shall be reimbursed by the special assessments, all as provided in the Resolution of Necessity.

Section 9. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action

were in meetings open to the public and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 10. This Ordinance shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the _____ day of _____, 2022;
_____ Yeas; _____ Nays.

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

CERTIFICATE

The undersigned, Clerk of Council of the City of Huber Heights, Ohio, hereby certifies that the foregoing is a true and correct copy of Ordinance No. 2022-O-_____ passed by the City Council of Huber Heights, on _____, 2022.

Clerk of Council

CITY OF HUBER HEIGHTS
STATE OF OHIO

ORDINANCE NO. 2022-O-

DETERMINING TO PROCEED WITH THE IMPROVEMENT OF PUBLIC STREETS AND EASEMENTS IN SECTION 2 - PHASE 5 AND SECTION 7 - PHASE 5 BY CONSTRUCTING AND INSTALLING CERTAIN PUBLIC INFRASTRUCTURE IMPROVEMENTS, INCLUDING STREET IMPROVEMENTS, SUBBASE, CONCRETE CURB/GUTTER WITH DRAINAGE, ASPHALT, STREET LIGHTS AND SIGNS, SIDEWALK, SURVEY WORK AND ENGINEERING, AND IN EACH CASE, ALL OTHER COSTS AND IMPROVEMENTS NECESSARY AND APPURTENANT THERETO.

WHEREAS, this Council has adopted Resolution No. 2022-R-____ on _____, 2022 (the “*Resolution of Necessity*”), declaring the necessity of making the Improvement described in Section 1.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Huber Heights, Ohio, that:

Section 1. It is determined to proceed with the improvement of public streets and easements by constructing and installing on the Property (as described in the Petition) certain public infrastructure improvements, including street improvements, subbase, concrete curb/gutter with drainage, asphalt, street lights and signs, sidewalk, survey work and engineering, and in each case, all other costs and improvements necessary and appurtenant thereto (collectively, the “*Improvement*”) more fully described in the plans and specifications on file in the Office of the Clerk of Council.

Section 2. The Improvement shall be made in accordance with the provisions of the Resolution of Necessity (including the Petition referenced therein and attached thereto) and with the plans, specifications, profiles and estimate of cost previously approved and now on file in the Office of the Clerk of Council. Other than the reimbursement by collected special assessments, no City funds shall be used towards the improvements being assessed.

Section 3. The portion of the cost of the Improvement to be assessed in accordance with the Resolution of Necessity and the related Petition shall be assessed in the manner and pursuant to the payment schedule set forth, and on the lots and lands described, in that Resolution and the related Petition.

Section 4. The City shall pay the Developer for a portion of the Improvement as set forth in the Petition, but only as and when the City receives these funds from the assessments described in the Petition. Any such payment shall exclude City and County administrative or similar collection or processing fees. All costs shall be paid by the Developer or the landowner, and the City assumes no obligation beyond the transfer of the assessments it receives to the Developer following completion of the Improvements.

Section 5. All claims for damages resulting from the Improvement that have been or are legally filed shall be inquired into after completion of the Improvement, and the City Attorney is authorized and directed to institute legal proceedings in a court of competent jurisdiction to inquire into those claims.

Section 6. The estimated special assessments previously prepared and filed in the Office of the Clerk of Council and in accordance with the Resolution of Necessity and the related Petition are adopted.

Section 7. The Clerk of Council shall deliver a certificate copy of this Ordinance to the County Auditor of Miami County, Ohio, within 15 days after its passage.

Section 8. Subject to the provisions of Section 727.24 of the Revised Code, the City Manager is authorized and directed to work with the Developer to proceed with contracting for the Improvement, and the Improvement shall be paid for by the Developer, which shall be reimbursed by the special assessments, all as provided in the Resolution of Necessity.

Section 9. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were in meetings open to the public and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 10. This Ordinance shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the _____ day of _____, 2022;
_____ Yeas; _____ Nays.

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

CERTIFICATE

The undersigned, Clerk of Council of the City of Huber Heights, Ohio, hereby certifies that the foregoing is a true and correct copy of Ordinance No. 2022-O-_____ passed by the City Council of Huber Heights, on _____, 2022.

Clerk of Council

AI-8523

**New Business A.
City Council**

City Council Meeting

Meeting Date: 07/11/2022

Retire/Rehire - Anthony Rodgers

Submitted By: Anthony Rodgers

Department: City Council

Council Committee Review?: Council **Date(s) of Committee Review:** 07/05/2022
Work
Session

Audio-Visual Needs: None **Emergency Legislation?:** No

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

A Resolution To Accept The Resignation Of Anthony C. Rodgers As Clerk Of Council And To Appoint Anthony C. Rodgers As Clerk Of Council.
(first reading)

Purpose and Background

This agenda item is to discuss the retirement and rehiring of Clerk of Council Anthony Rodgers.

Fiscal Impact

Source of Funds: N/A

Cost: N/A

Recurring Cost? (Yes/No): N/A

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

Attachments

Resolution

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2022-R-

TO ACCEPT THE RESIGNATION OF ANTHONY C. RODGERS AS CLERK OF COUNCIL
AND TO APPOINT ANTHONY C. RODGERS AS CLERK OF COUNCIL.

WHEREAS, Section 4.08 of the Charter of the City of Huber Heights, Ohio requires that the
City Council appoint a Clerk of Council; and

WHEREAS, Anthony C. Rodgers desires to retire from the position of Clerk of Council effective
July 31, 2022; and

WHEREAS, the City Council desires to appoint Anthony C. Rodgers to the position of Clerk of
Council effective August 1, 2022; and

WHEREAS, the City Council desires to appoint Anthony C. Rodgers at a salary within the limits
described in Resolution No. 2022-R-7134; and with certain benefits, as agreed upon between the
City Council and Anthony C. Rodgers within the limits of benefits offered to all employees of
the City of Huber Heights.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio, that:

Section 1. After due deliberation and consistent with the provisions and requirements of
Section 145.381 – Re-employing Retirant of the Ohio Revised Code, the City Council accepts
the resignation of Anthony C. Rodgers as Clerk of Council effective July 31, 2022 and appoints
Anthony C. Rodgers as Clerk of Council effective August 1, 2022.

Section 2. The City Council is hereby authorized to offer to Anthony C. Rodgers, a salary
and benefits consistent with Resolution No. 2022-R-7134 and within the limits of benefits and
pay offered to all City employees.

Section 3. It is hereby found and determined that all formal actions of this Council
concerning and relating to the passage of this Resolution were adopted in an open meeting of
this Council and that all deliberations of this Council and of any of its Committees that resulted
in such formal action were taken in meetings open to the public and in conformance with all
legal requirements including Section 121.22 of the Ohio Revised Code.

Section 4. This Resolution shall go into effect upon its passage as provided by law and the
Charter of the City of Huber Heights.

Passed by Council on the _____ day of _____, 2022;
_____ Yeas; _____ Nays.

Effective Date:

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

AI-8532

**New Business B.
City Council**

City Council Meeting

Meeting Date: 07/11/2022

City Manager Search Process - Restart - Baker Tilly

Submitted By: Anthony Rodgers

Department: City Council

Council Committee Review?: Council **Date(s) of Committee Review:** 06/21/2022
Work
Session

Audio-Visual Needs: None **Emergency Legislation?:** No

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

A Motion To Direct The Clerk Of Council To Authorize Baker Tilly To Restart The City Manager Search Process.

Purpose and Background

This agenda item is to discuss a motion to direct the Clerk of Council to authorize Baker Tilly to restart the City Manager search process.

Fiscal Impact

Source of Funds: N/A

Cost: N/A

Recurring Cost? (Yes/No): N/A

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

Attachments

No file(s) attached.

AI-8530

**New Business C.
City Council**

City Council Meeting

Meeting Date: 07/11/2022

City Manager Appointment/Professional Services Agreement - G. Smith

Submitted By: Anthony Rodgers

Department: City Council

Council Committee Review?: Council Work Session **Date(s) of Committee Review:** 06/21/2022

Audio-Visual Needs: None **Emergency Legislation?:** No

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

A Resolution To Appoint Gerald Smith To The Position Of City Manager Of The City Of Huber Heights.
(first reading)

Purpose and Background

This legislation is for City Council to appoint Gerald Smith as the City Manager and to approve a professional services agreement for the new City Manager.

Fiscal Impact

Source of Funds: N/A

Cost: N/A

Recurring Cost? (Yes/No): N/A

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

Attachments

Resolution

Exhibit A

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2022-R-

TO APPOINT GERALD SMITH TO THE POSITION OF CITY MANAGER OF THE CITY OF HUBER HEIGHTS.

WHEREAS, the City Council wishes to appoint Gerald Smith as City Manager of the City of Huber Heights; and

WHEREAS, it is the desire of the City Council of Huber Heights to provide certain benefits and to establish certain conditions of the appointment and to set the compensation as set forth in the Professional Services Agreement.

NOW THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio that:

Section 1. Gerald Smith is hereby appointed to the position of City Manager of the City of Huber Heights in accord with the terms and conditions and compensation contained in the Professional Services Agreement attached hereto as Exhibit A which is incorporated herein by this reference.

Section 2. The Mayor is hereby authorized to sign said Professional Services Agreement on behalf of City Council and all other documents necessary to engage Gerald Smith as City Manager. Four originals of the Professional Services Agreement shall be signed. One original shall be kept with the City’s Finance Department. A second original shall be kept with the City Law Director. A third original shall be kept with the Clerk of Council. A fourth original shall be provided to Gerald Smith.

Section 3. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were in meetings open to the public and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 4. This Resolution shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the _____ day of _____, 2022;
_____ Yeas; _____ Nays.

Effective Date:

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

EXHIBIT A
PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2022, by and between the City of Huber Heights, Ohio, an Ohio municipal corporation, hereinafter called "City," and Gerald Smith hereinafter called "Smith".

WITNESSETH

WHEREAS, City desires to secure the services of Smith as City Manager of the City of Huber Heights, as provided for in Article VI of the Charter of the City of Huber Heights; and

WHEREAS, Smith desires to accept the position as City Manager of Huber Heights, Ohio pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

Section 1. Nature of Appointment.

- A. City hereby agrees to appoint Smith as City Manager of the City of Huber Heights to perform the functions and duties specified in the City Charter, and to perform such other legally permissible and proper duties and functions as the City Council shall from time-to-time assign, subject to this Agreement.
- B. Smith agrees that he will support the Constitution of the United States, the Constitution of the State of Ohio, the Charter and all Ordinances of the City of Huber Heights, Ohio, and will at all times faithfully, honestly, and impartially discharge the duties of the office of the City Manager to the best of his abilities.

Section 2. Term of Agreement.

- A. Smith shall serve at the pleasure of the City Council commencing **TBD**. Smith may be removed as City Manager at any time as provided in Section 6.03 of the City Charter.
- B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Smith to resign or retire at any time from his position with City. However, Smith agrees to provide thirty (30) days' notice of his resignation. In the event Smith decides to retire from City service, he agrees to provide City Council with a minimum of six (6) months of advance notice (unless such retirement is medical in nature or considered disability) of such retirement.
- C. Smith agrees not to be employed by any third party while serving pursuant to this Agreement. The term "employed" however, shall not be construed to include occasional teaching or consulting performed outside of his working hours for the City and at his own cost, even if outside compensation is provided for such services. Said activities are expressly allowed, provided that in no case is any activity allowed which would present a conflict of interest with the City of Huber Heights.

Section 3. Residency

A. To the fullest extent permitted by law, Smith as City Manager, an appointed municipal official, shall reside in the City as required by Section 6.01 of the City Charter.

Section 4. Salary.

A. City agrees to pay Smith for his services rendered pursuant hereto as City Manager an annual base salary of One Hundred Sixty Thousand Dollars (\$160,000.00) payable in installments at the same time as employees of the City are paid. This annual base salary shall apply for the first three years of this Agreement so long as Smith is City Manager. City agrees to increase said salary by the annual Cost of Living Adjustment (COLA), if any, and any annual merit pay increase provided to City employees in accordance with the City of Huber Heights Performance Compensation Plan for Non-Bargaining Employees (or other documents which may be adopted by City Council from time to time for non-union employee compensation), effective with the first pay period as all non-union City employees on the first pay period of each year, without further action.

Section 5. Vacation, Sick and Other Leave.

A. Smith shall be entitled to the accumulation of hours for various leave (including but not limited to vacation leave, personal leave, and sick leave) pursuant to City policies for non-bargaining employees. Smith may opt to cash out the maximum number of hours per year of vacation, sick or other leave as provided for in the Employee Manual applicable to employees.

Section 6. Insurance Coverage.

A. Smith shall be covered by the same life, health, dental, vision, disability plans, including the Family Medical Leave Act and worker's compensation benefits, and any other insurance at least equal to that which is provided to employees of the City.

Section 7. Other.

A. In his capacity as City Manager, Smith shall also serve as the Director of Public Safety. The position of Director of Public Safety is tied to the job of City Manager. If for any reason Smith is no longer City Manager, the designation as the Director of Public Safety shall automatically terminate. No benefits accrue to Smith hereunder in his capacity as Director of Public Safety. As a result of the duties of Public Safety Director, Smith is expected to respond to certain emergencies, and conduct activities associated with public safety and shall be provided with a City vehicle for his use pursuant to City policy.

B. Smith shall to the fullest extent permitted by law, be covered and governed by the Ohio Public Employees Retirement System (OPERS), with the City contributing its required percentage of base salary. Calculations for retirement contributions shall include all compensation normally reportable to OPERS.

C. Smith shall be expected to further his education and attain professional certifications by taking courses in the field of organization management, public administration, and other areas

directly relevant to his position as City Manager so as to enhance his skills as needed in his position. Smith will be expected to maintain his regular work schedule while attending such courses. Reimbursement for such education shall be according to the Educational Assistance policy applicable to City employees. However, in this case, any advance approvals for courses shall be made by the Mayor.

D. Smith shall provide to City Council and the community a monthly activity update unless otherwise provided by Council.

Section 8. Policies, Rules and Regulations of City

A. All provisions of the Charter, and policies, rules and regulations of the City including those relating to fringe benefits and working conditions as they now exist or hereafter may be amended, shall apply to Smith as they do to non-union employees of the City. All benefits which vary according to tenure shall be calculated and granted in accordance with City provisions applicable to City employees, based upon Smith's original employment date with the City.

Section 9. Hours of Work.

A. It is expected that Smith will typically work during normal City Hall office hours. However, it is recognized that Smith must devote a great deal of time outside those normal office hours on business for the City including after hour meetings. Accordingly, and to that end, Smith shall establish a work schedule necessary to fulfill his duties as City Manager. Smith is not eligible for overtime or paid compensatory hours.

Section 10. Professional Development.

A. City agrees to pay the expense of memberships, registration, travel, meals and lodging in association with business-related conferences, education or other meetings, according to approved appropriations for travel, training, and professional dues in the annual City Budget.

B. Smith shall attend regional groups for professional organization such as Mayor/Manager, Dayton Area Managers Association, Dayton Area Managers Roundtable, Ohio City/County Managers Association, etc., and will report to Council monthly regarding same unless otherwise directed by Council.

Section 11. Moving and Relocation Expenses

A. Smith has agreed that it is his intention to establish his sole residence within the corporate boundaries of the City of Huber Heights, Ohio within four (4) months of employment, and thereafter to maintain residence within the corporate boundaries of the City.

B. City shall pay the actual and reasonable moving expenses of City Manager in an amount not to exceed Eight Thousand Five Hundred Dollars (\$8,500) upon presentation of invoices and receipts evidencing such expenditures. Said moving expenses include packing, moving, storage costs, unpacking, and insurance charges. In the event of Smith's election for early termination of employment with the City before completion of twelve (12) months of the Term, Smith shall reimburse City all of said moving expenses. In the event of Smith's election for early termination

of employment with the City after completion of twelve (12) months of the Term but not more than twenty-four (24) months of the Term, Smith shall reimburse the City for one-half of said moving expenses.

Section 12. Indemnification.

A. City shall defend, indemnify and hold Smith harmless from and against any and all torts, claims, causes of action, demands, costs, expenses or other legal action, including all attorneys' fees, whether groundless or otherwise, arising out of any alleged act or omission in connection with a governmental or proprietary function and occurring during or arising out of Smith's good faith performance of duties and not manifestly outside the scope of his appointment or official responsibilities as City Manager. City shall have the right to compromise and settle any such claim or suit and shall pay the amount of any settlement or judgment rendered thereon. Said indemnification shall extend beyond Smith's termination, and the otherwise expiration of this Agreement, to provide full and complete protection to Smith by the City of Huber Heights, as described herein, for any acts undertaken or committed in his capacity as City Manager, regardless of whether the filing of a lawsuit for such tort, claim, cause of action, demand, or other legal action occurs during or following Smith's services to the City have ceased.

Section 13. General Provisions.

- A. The text herein shall constitute the entire Agreement between the parties.
- B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Smith.
- C. This Agreement shall become effective only after adoption and approval by the City Council of the City of Huber Heights.
- D. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall not be affected and shall remain in full force and effect.

Section 14. Termination and Severance Pay.

- A. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Council to terminate the services of Smith at any time with or without cause as provided by the City Charter.
- B. Terminated "for cause" shall mean Smith is terminated because of a violation of, or failure to comply with, the terms of this Agreement; conviction of any illegal act involving personal gain to Smith or any other person; or for any felony or for any crime of moral turpitude which negatively impacts the City. In the event Smith is terminated for cause then, in that event, City shall have no obligation to pay the severance sum designated herein.
- C. In the event Smith is terminated without cause, the City shall: (1) pay Smith a lump sum cash payment equal to three (3) months of his annual base salary; (2) pay Smith the unpaid balance of salary earned from the beginning of the then-current pay period through the date of

termination; and (3) pay for all accrued benefits in accord with the Employment Manual of the City applicable to all employees.

D. In the event the City Council at any time reduces the salary, compensation or other benefits of Smith in a greater amount than an applicable across-the-board reduction Smith may, at his option, be deemed to be "terminated without cause" at the date of such reduction. Provided however, it is understood that this Agreement, including the salary may be renegotiated at the end of three years.

E. For purposes of complying with Section 14 of this Agreement, appropriations held as an unencumbered fund balance in the General Fund or other account of the City shall be deemed to be available and authorized for transfer to the appropriate salary and benefit expenditure accounts to ensure fulfillment of this provision of the Agreement.

F. Resignation or retirement by Smith forfeits any rights of severance under this Agreement, except for such rights as would be provided to any City employee upon resignation or retirement pursuant to the City personnel rules, policies and regulations.

G. Contemporaneously with the delivery of the severance pay set forth in this Agreement, Smith shall execute and deliver to City a release, releasing City of all claims that Smith may have against City.

IN WITNESS WHEREOF, the City of Huber Heights has caused this Agreement to be signed and executed by its Mayor and duly authenticated by its Clerk of Council, and Smith has signed and executed this Agreement, the day and year first written above.

CITY OF HUBER HEIGHTS, OHIO

CITY MANAGER

By: _____
Jeff Gore, Mayor

By: _____
Gerald Smith

AUTHENTICATION:

By: _____
Anthony C. Rodgers, Clerk of Council

AI-8500

**New Business D.
City Council**

City Council Meeting

Meeting Date: 07/11/2022

City Manager Appointment/Professional Services Agreement - R. Dzik

Submitted By: Anthony Rodgers

Department: City Council

Council Committee Review?: Council **Date(s) of Committee Review:** 06/21/2022
Work
Session

Audio-Visual Needs: None **Emergency Legislation?:** No

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

A Resolution To Appoint Richard Dzik To The Position Of City Manager Of The City Of Huber Heights.
(second reading)

Purpose and Background

This legislation is for City Council to appoint Richard Dzik as the City Manager and to approve a professional services agreement for the new City Manager.

Fiscal Impact

Source of Funds: N/A

Cost: N/A

Recurring Cost? (Yes/No): N/A

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

Attachments

Resolution

Exhibit A

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2022-R-

TO APPOINT RICHARD DZIK TO THE POSITION OF CITY MANAGER OF THE CITY OF HUBER HEIGHTS.

WHEREAS, the City Council wishes to appoint Richard Dzik as City Manager of the City of Huber Heights; and

WHEREAS, it is the desire of the City Council of Huber Heights to provide certain benefits and to establish certain conditions of the appointment and to set the compensation as set forth in the Professional Services Agreement.

NOW THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio that:

Section 1. Richard Dzik is hereby appointed to the position of City Manager of the City of Huber Heights in accord with the terms and conditions and compensation contained in the Professional Services Agreement attached hereto as Exhibit A which is incorporated herein by this reference.

Section 2. The Mayor is hereby authorized to sign said Professional Services Agreement on behalf of City Council and all other documents necessary to engage Richard Dzik as City Manager. Four originals of the Professional Services Agreement shall be signed. One original shall be kept with the City’s Finance Department. A second original shall be kept with the City Law Director. A third original shall be kept with the Clerk of Council. A fourth original shall be provided to Richard Dzik.

Section 3. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were in meetings open to the public and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 4. This Resolution shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the _____ day of _____, 2022;
_____ Yeas; _____ Nays.

Effective Date:

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

EXHIBIT A
PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2022, by and between the City of Huber Heights, Ohio, an Ohio municipal corporation, hereinafter called "City," and Richard Dzik hereinafter called "Dzik".

WITNESSETH

WHEREAS, City desires to secure the services of Dzik as City Manager of the City of Huber Heights, as provided for in Article VI of the Charter of the City of Huber Heights; and

WHEREAS, Dzik desires to accept the position as City Manager of Huber Heights, Ohio pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

Section 1. Nature of Appointment.

- A. City hereby agrees to appoint Dzik as City Manager of the City of Huber Heights to perform the functions and duties specified in the City Charter, and to perform such other legally permissible and proper duties and functions as the City Council shall from time-to-time assign, subject to this Agreement.
- B. Dzik agrees that he will support the Constitution of the United States, the Constitution of the State of Ohio, the Charter and all Ordinances of the City of Huber Heights, Ohio, and will at all times faithfully, honestly, and impartially discharge the duties of the office of the City Manager to the best of his abilities.

Section 2. Term of Agreement.

- A. Dzik shall serve at the pleasure of the City Council commencing **TBD**. Dzik may be removed as City Manager at any time as provided in Section 6.03 of the City Charter.
- B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Dzik to resign or retire at any time from his position with City. However, Dzik agrees to provide thirty (30) days' notice of his resignation. In the event Dzik decides to retire from City service, he agrees to provide City Council with a minimum of six (6) months of advance notice (unless such retirement is medical in nature or considered disability) of such retirement.
- C. Dzik agrees not to be employed by any third party while serving pursuant to this Agreement. The term "employed" however, shall not be construed to include occasional teaching or consulting performed outside of his working hours for the City and at his own cost, even if outside compensation is provided for such services. Said activities are expressly allowed, provided that in no case is any activity allowed which would present a conflict of interest with the City of Huber Heights.

Section 3. Residency

A. To the fullest extent permitted by law, Dzik as City Manager, an appointed municipal official, shall reside in the City as required by Section 6.01 of the City Charter.

Section 4. Salary.

A. City agrees to pay Dzik for his services rendered pursuant hereto as City Manager an annual base salary of One Hundred Sixty Thousand Dollars (\$160,000.00) payable in installments at the same time as employees of the City are paid. This annual base salary shall apply for the first three years of this Agreement so long as Dzik is City Manager. City agrees to increase said salary by the annual Cost of Living Adjustment (COLA), if any, and any annual merit pay increase provided to City employees in accordance with the City of Huber Heights Performance Compensation Plan for Non-Bargaining Employees (or other documents which may be adopted by City Council from time to time for non-union employee compensation), effective with the first pay period as all non-union City employees on the first pay period of each year, without further action.

Section 5. Vacation, Sick and Other Leave.

A. Dzik shall be entitled to the accumulation of hours for various leave (including but not limited to vacation leave, personal leave, and sick leave) pursuant to City policies for non-bargaining employees. Dzik may opt to cash out the maximum number of hours per year of vacation, sick or other leave as provided for in the Employee Manual applicable to employees.

Section 6. Insurance Coverage.

A. Dzik shall be covered by the same life, health, dental, vision, disability plans, including the Family Medical Leave Act and worker's compensation benefits, and any other insurance at least equal to that which is provided to employees of the City.

Section 7. Other.

A. In his capacity as City Manager, Dzik shall also serve as the Director of Public Safety. The position of Director of Public Safety is tied to the job of City Manager. If for any reason Dzik is no longer City Manager, the designation as the Director of Public Safety shall automatically terminate. No benefits accrue to Dzik hereunder in his capacity as Director of Public Safety. As a result of the duties of Public Safety Director, Dzik is expected to respond to certain emergencies, and conduct activities associated with public safety and shall be provided with a City vehicle for his use pursuant to City policy.

B. Dzik shall to the fullest extent permitted by law, be covered and governed by the Ohio Public Employees Retirement System (OPERS), with the City contributing its required percentage of base salary. Calculations for retirement contributions shall include all compensation normally reportable to OPERS.

C. Dzik shall be expected to further his education and attain professional certifications by taking courses in the field of organization management, public administration, and other areas

directly relevant to his position as City Manager so as to enhance his skills as needed in his position. Dzik will be expected to maintain his regular work schedule while attending such courses. Reimbursement for such education shall be according to the Educational Assistance policy applicable to City employees. However, in this case, any advance approvals for courses shall be made by the Mayor.

D. Dzik shall provide to City Council and the community a monthly activity update unless otherwise provided by Council.

Section 8. Policies, Rules and Regulations of City

A. All provisions of the Charter, and policies, rules and regulations of the City including those relating to fringe benefits and working conditions as they now exist or hereafter may be amended, shall apply to Dzik as they do to non-union employees of the City. All benefits which vary according to tenure shall be calculated and granted in accordance with City provisions applicable to City employees, based upon Dzik's original employment date with the City.

Section 9. Hours of Work.

A. It is expected that Dzik will typically work during normal City Hall office hours. However, it is recognized that Dzik must devote a great deal of time outside those normal office hours on business for the City including after hour meetings. Accordingly, and to that end, Dzik shall establish a work schedule necessary to fulfill his duties as City Manager. Dzik is not eligible for overtime or paid compensatory hours.

Section 10. Professional Development.

A. City agrees to pay the expense of memberships, registration, travel, meals and lodging in association with business-related conferences, education or other meetings, according to approved appropriations for travel, training, and professional dues in the annual City Budget.

B. Dzik shall attend regional groups for professional organization such as Mayor/Manager, Dayton Area Managers Association, Dayton Area Managers Roundtable, Ohio City/County Managers Association, etc., and will report to Council monthly regarding same unless otherwise directed by Council.

Section 11. Moving and Relocation Expenses

A. Dzik has agreed that it is his intention to establish his sole residence within the corporate boundaries of the City of Huber Heights, Ohio within four (4) months of employment, and thereafter to maintain residence within the corporate boundaries of the City.

B. City shall pay the actual and reasonable moving expenses of City Manager in an amount not to exceed Eight Thousand Five Hundred Dollars (\$8,500) upon presentation of invoices and receipts evidencing such expenditures. Said moving expenses include packing, moving, storage costs, unpacking, and insurance charges. In the event of Dzik's election for early termination of employment with the City before completion of twelve (12) months of the Term, Dzik shall reimburse City all of said moving expenses. In the event of Dzik's election for early termination

of employment with the City after completion of twelve (12) months of the Term but not more than twenty-four (24) months of the Term, Dzik shall reimburse the City for one-half of said moving expenses.

Section 12. Indemnification.

A. City shall defend, indemnify and hold Dzik harmless from and against any and all torts, claims, causes of action, demands, costs, expenses or other legal action, including all attorneys' fees, whether groundless or otherwise, arising out of any alleged act or omission in connection with a governmental or proprietary function and occurring during or arising out of Dzik's good faith performance of duties and not manifestly outside the scope of his appointment or official responsibilities as City Manager. City shall have the right to compromise and settle any such claim or suit and shall pay the amount of any settlement or judgment rendered thereon. Said indemnification shall extend beyond Dzik's termination, and the otherwise expiration of this Agreement, to provide full and complete protection to Dzik by the City of Huber Heights, as described herein, for any acts undertaken or committed in his capacity as City Manager, regardless of whether the filing of a lawsuit for such tort, claim, cause of action, demand, or other legal action occurs during or following Dzik's services to the City have ceased.

Section 13. General Provisions.

- A. The text herein shall constitute the entire Agreement between the parties.
- B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Dzik.
- C. This Agreement shall become effective only after adoption and approval by the City Council of the City of Huber Heights.
- D. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall not be affected and shall remain in full force and effect.

Section 14. Termination and Severance Pay.

- A. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Council to terminate the services of Dzik at any time with or without cause as provided by the City Charter.
- B. Terminated "for cause" shall mean Dzik is terminated because of a violation of, or failure to comply with, the terms of this Agreement; conviction of any illegal act involving personal gain to Dzik or any other person; or for any felony or for any crime of moral turpitude which negatively impacts the City. In the event Dzik is terminated for cause then, in that event, City shall have no obligation to pay the severance sum designated herein.
- C. In the event Dzik is terminated without cause, the City shall: (1) pay Dzik a lump sum cash payment equal to three (3) months of his annual base salary; (2) pay Dzik the unpaid balance of salary earned from the beginning of the then-current pay period through the date of termination;

and (3) pay for all accrued benefits in accord with the Employment Manual of the City applicable to all employees.

D. In the event the City Council at any time reduces the salary, compensation or other benefits of Dzik in a greater amount than an applicable across-the-board reduction Dzik may, at his option, be deemed to be "terminated without cause" at the date of such reduction. Provided however, it is understood that this Agreement, including the salary may be renegotiated at the end of three years.

E. For purposes of complying with Section 14 of this Agreement, appropriations held as an unencumbered fund balance in the General Fund or other account of the City shall be deemed to be available and authorized for transfer to the appropriate salary and benefit expenditure accounts to ensure fulfillment of this provision of the Agreement.

F. Resignation or retirement by Dzik forfeits any rights of severance under this Agreement, except for such rights as would be provided to any City employee upon resignation or retirement pursuant to the City personnel rules, policies and regulations.

G. Contemporaneously with the delivery of the severance pay set forth in this Agreement, Dzik shall execute and deliver to City a release, releasing City of all claims that Dzik may have against City.

IN WITNESS WHEREOF, the City of Huber Heights has caused this Agreement to be signed and executed by its Mayor and duly authenticated by its Clerk of Council, and Dzik has signed and executed this Agreement, the day and year first written above.

CITY OF HUBER HEIGHTS, OHIO

CITY MANAGER

By: _____
Jeff Gore, Mayor

By: _____
Richard Dzik

AUTHENTICATION:

By: _____
Anthony C. Rodgers, Clerk of Council

AI-8531

**New Business E.
City Council**

City Council Meeting

Meeting Date: 07/11/2022

City Manager Appointment/Professional Services Agreement - J. Russell

Submitted By: Anthony Rodgers

Department: City Council

Council Committee Review?: Council **Date(s) of Committee Review:** 06/21/2022
Work
Session

Audio-Visual Needs: None **Emergency Legislation?:** No

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

A Resolution To Appoint John Russell To The Position Of City Manager Of The City Of Huber Heights.
(first reading)

Purpose and Background

This legislation is for City Council to appoint John Russell as the City Manager and to approve a professional services agreement for the new City Manager.

Fiscal Impact

Source of Funds: N/A

Cost: N/A

Recurring Cost? (Yes/No): N/A

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

Attachments

Resolution

Exhibit A

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2022-R-

TO APPOINT JOHN RUSSELL TO THE POSITION OF CITY MANAGER OF THE CITY OF HUBER HEIGHTS.

WHEREAS, the City Council wishes to appoint John Russell as City Manager of the City of Huber Heights; and

WHEREAS, it is the desire of the City Council of Huber Heights to provide certain benefits and to establish certain conditions of the appointment and to set the compensation as set forth in the Professional Services Agreement.

NOW THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio that:

Section 1. John Russell is hereby appointed to the position of City Manager of the City of Huber Heights in accord with the terms and conditions and compensation contained in the Professional Services Agreement attached hereto as Exhibit A which is incorporated herein by this reference.

Section 2. The Mayor is hereby authorized to sign said Professional Services Agreement on behalf of City Council and all other documents necessary to engage John Russell as City Manager. Four originals of the Professional Services Agreement shall be signed. One original shall be kept with the City’s Finance Department. A second original shall be kept with the City Law Director. A third original shall be kept with the Clerk of Council. A fourth original shall be provided to John Russell.

Section 3. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were in meetings open to the public and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 4. This Resolution shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the _____ day of _____, 2022;
_____ Yeas; _____ Nays.

Effective Date:

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

EXHIBIT A
PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2022, by and between the City of Huber Heights, Ohio, an Ohio municipal corporation, hereinafter called "City," and John Russell hereinafter called "Russell".

WITNESSETH

WHEREAS, City desires to secure the services of Russell as City Manager of the City of Huber Heights, as provided for in Article VI of the Charter of the City of Huber Heights; and

WHEREAS, Russell desires to accept the position as City Manager of Huber Heights, Ohio pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

Section 1. Nature of Appointment.

- A. City hereby agrees to appoint Russell as City Manager of the City of Huber Heights to perform the functions and duties specified in the City Charter, and to perform such other legally permissible and proper duties and functions as the City Council shall from time-to-time assign, subject to this Agreement.
- B. Russell agrees that he will support the Constitution of the United States, the Constitution of the State of Ohio, the Charter and all Ordinances of the City of Huber Heights, Ohio, and will at all times faithfully, honestly, and impartially discharge the duties of the office of the City Manager to the best of his abilities.

Section 2. Term of Agreement.

- A. Russell shall serve at the pleasure of the City Council commencing **TBD**. Russell may be removed as City Manager at any time as provided in Section 6.03 of the City Charter.
- B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Russell to resign or retire at any time from his position with City. However, Russell agrees to provide thirty (30) days' notice of his resignation. In the event Russell decides to retire from City service, he agrees to provide City Council with a minimum of six (6) months of advance notice (unless such retirement is medical in nature or considered disability) of such retirement.
- C. Russell agrees not to be employed by any third party while serving pursuant to this Agreement. The term "employed" however, shall not be construed to include occasional teaching or consulting performed outside of his working hours for the City and at his own cost, even if outside compensation is provided for such services. Said activities are expressly allowed, provided that in no case is any activity allowed which would present a conflict of interest with the City of Huber Heights.

Section 3. Residency

A. To the fullest extent permitted by law, Russell as City Manager, an appointed municipal official, shall reside in the City as required by Section 6.01 of the City Charter.

Section 4. Salary.

A. City agrees to pay Russell for his services rendered pursuant hereto as City Manager an annual base salary of One Hundred Sixty Thousand Dollars (\$160,000.00) payable in installments at the same time as employees of the City are paid. This annual base salary shall apply for the first three years of this Agreement so long as Russell is City Manager. City agrees to increase said salary by the annual Cost of Living Adjustment (COLA), if any, and any annual merit pay increase provided to City employees in accordance with the City of Huber Heights Performance Compensation Plan for Non-Bargaining Employees (or other documents which may be adopted by City Council from time to time for non-union employee compensation), effective with the first pay period as all non-union City employees on the first pay period of each year, without further action.

Section 5. Vacation, Sick and Other Leave.

A. Russell shall be entitled to the accumulation of hours for various leave (including but not limited to vacation leave, personal leave, and sick leave) pursuant to City policies for non-bargaining employees. Russell may opt to cash out the maximum number of hours per year of vacation, sick or other leave as provided for in the Employee Manual applicable to employees.

Section 6. Insurance Coverage.

A. Russell shall be covered by the same life, health, dental, vision, disability plans, including the Family Medical Leave Act and worker's compensation benefits, and any other insurance at least equal to that which is provided to employees of the City.

Section 7. Other.

A. In his capacity as City Manager, Russell shall also serve as the Director of Public Safety. The position of Director of Public Safety is tied to the job of City Manager. If for any reason Russell is no longer City Manager, the designation as the Director of Public Safety shall automatically terminate. No benefits accrue to Russell hereunder in his capacity as Director of Public Safety. As a result of the duties of Public Safety Director, Russell is expected to respond to certain emergencies, and conduct activities associated with public safety and shall be provided with a City vehicle for his use pursuant to City policy.

B. Russell shall to the fullest extent permitted by law, be covered and governed by the Ohio Public Employees Retirement System (OPERS), with the City contributing its required percentage of base salary. Calculations for retirement contributions shall include all compensation normally reportable to OPERS.

C. Russell shall be expected to further his education and attain professional certifications by taking courses in the field of organization management, public administration, and other areas

directly relevant to his position as City Manager so as to enhance his skills as needed in his position. Russell will be expected to maintain his regular work schedule while attending such courses. Reimbursement for such education shall be according to the Educational Assistance policy applicable to City employees. However, in this case, any advance approvals for courses shall be made by the Mayor.

D. Russell shall provide to City Council and the community a monthly activity update unless otherwise provided by Council.

Section 8. Policies, Rules and Regulations of City

A. All provisions of the Charter, and policies, rules and regulations of the City including those relating to fringe benefits and working conditions as they now exist or hereafter may be amended, shall apply to Russell as they do to non-union employees of the City. All benefits which vary according to tenure shall be calculated and granted in accordance with City provisions applicable to City employees, based upon Russell's original employment date with the City.

Section 9. Hours of Work.

A. It is expected that Russell will typically work during normal City Hall office hours. However, it is recognized that Russell must devote a great deal of time outside those normal office hours on business for the City including after hour meetings. Accordingly, and to that end, Russell shall establish a work schedule necessary to fulfill his duties as City Manager. Russell is not eligible for overtime or paid compensatory hours.

Section 10. Professional Development.

A. City agrees to pay the expense of memberships, registration, travel, meals and lodging in association with business-related conferences, education or other meetings, according to approved appropriations for travel, training, and professional dues in the annual City Budget.

B. Russell shall attend regional groups for professional organization such as Mayor/Manager, Dayton Area Managers Association, Dayton Area Managers Roundtable, Ohio City/County Managers Association, etc., and will report to Council monthly regarding same unless otherwise directed by Council.

Section 11. Moving and Relocation Expenses

A. Russell has agreed that it is his intention to establish his sole residence within the corporate boundaries of the City of Huber Heights, Ohio within four (4) months of employment, and thereafter to maintain residence within the corporate boundaries of the City.

B. City shall pay the actual and reasonable moving expenses of City Manager in an amount not to exceed Eight Thousand Five Hundred Dollars (\$8,500) upon presentation of invoices and receipts evidencing such expenditures. Said moving expenses include packing, moving, storage costs, unpacking, and insurance charges. In the event of Russell's election for early termination of employment with the City before completion of twelve (12) months of the Term, Russell shall reimburse City all of said moving expenses. In the event of Russell's election for early termination

of employment with the City after completion of twelve (12) months of the Term but not more than twenty-four (24) months of the Term, Russell shall reimburse the City for one-half of said moving expenses.

Section 12. Indemnification.

A. City shall defend, indemnify and hold Russell harmless from and against any and all torts, claims, causes of action, demands, costs, expenses or other legal action, including all attorneys' fees, whether groundless or otherwise, arising out of any alleged act or omission in connection with a governmental or proprietary function and occurring during or arising out of Russell's good faith performance of duties and not manifestly outside the scope of his appointment or official responsibilities as City Manager. City shall have the right to compromise and settle any such claim or suit and shall pay the amount of any settlement or judgment rendered thereon. Said indemnification shall extend beyond Russell's termination, and the otherwise expiration of this Agreement, to provide full and complete protection to Russell by the City of Huber Heights, as described herein, for any acts undertaken or committed in his capacity as City Manager, regardless of whether the filing of a lawsuit for such tort, claim, cause of action, demand, or other legal action occurs during or following Russell's services to the City have ceased.

Section 13. General Provisions.

- A. The text herein shall constitute the entire Agreement between the parties.
- B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Russell.
- C. This Agreement shall become effective only after adoption and approval by the City Council of the City of Huber Heights.
- D. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall not be affected and shall remain in full force and effect.

Section 14. Termination and Severance Pay.

- A. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Council to terminate the services of Russell at any time with or without cause as provided by the City Charter.
- B. Terminated "for cause" shall mean Russell is terminated because of a violation of, or failure to comply with, the terms of this Agreement; conviction of any illegal act involving personal gain to Russell or any other person; or for any felony or for any crime of moral turpitude which negatively impacts the City. In the event Russell is terminated for cause then, in that event, City shall have no obligation to pay the severance sum designated herein.
- C. In the event Russell is terminated without cause, the City shall: (1) pay Russell a lump sum cash payment equal to three (3) months of his annual base salary; (2) pay Russell the unpaid balance of salary earned from the beginning of the then-current pay period through the date of

termination; and (3) pay for all accrued benefits in accord with the Employment Manual of the City applicable to all employees.

D. In the event the City Council at any time reduces the salary, compensation or other benefits of Russell in a greater amount than an applicable across-the-board reduction Russell may, at his option, be deemed to be "terminated without cause" at the date of such reduction. Provided however, it is understood that this Agreement, including the salary may be renegotiated at the end of three years.

E. For purposes of complying with Section 14 of this Agreement, appropriations held as an unencumbered fund balance in the General Fund or other account of the City shall be deemed to be available and authorized for transfer to the appropriate salary and benefit expenditure accounts to ensure fulfillment of this provision of the Agreement.

F. Resignation or retirement by Russell forfeits any rights of severance under this Agreement, except for such rights as would be provided to any City employee upon resignation or retirement pursuant to the City personnel rules, policies and regulations.

G. Contemporaneously with the delivery of the severance pay set forth in this Agreement, Russell shall execute and deliver to City a release, releasing City of all claims that Russell may have against City.

IN WITNESS WHEREOF, the City of Huber Heights has caused this Agreement to be signed and executed by its Mayor and duly authenticated by its Clerk of Council, and Russell has signed and executed this Agreement, the day and year first written above.

CITY OF HUBER HEIGHTS, OHIO

CITY MANAGER

By: _____
Jeff Gore, Mayor

By: _____
John Russell

AUTHENTICATION:

By: _____
Anthony C. Rodgers, Clerk of Council

AI-8529

**New Business F.
City Council**

City Council Meeting

Meeting Date: 07/11/2022

Rules Of Council - Amendment - Council Absences/Votes

Submitted By: Anthony Rodgers

Department: City Council

Council Committee Review?: Council **Date(s) of Committee Review:** 07/05/2022
Work
Session

Audio-Visual Needs: None **Emergency Legislation?:** No

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

A Motion To Amend Section II - Meetings - (M) Attendance, Absences And Removals Of The 2022 Rules Of Council As Attached.

Purpose and Background

This agenda item is for consideration of an amendment to Section II - Meetings - (M) Attendance, Absences and Removals of the 2022 Rules Of Council as proposed by Councilmember Don Webb (see attached).

Fiscal Impact

Source of Funds: N/A

Cost: N/A

Recurring Cost? (Yes/No): N/A

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

Attachments

Rules Of Council - Amendment

M. Attendance, Absences, and Removals: Councilmembers are required and expected to attend all Regular City Council Meetings and Special City Council Meetings. Absences from Council meetings may be excused for reasonable cause. All absences from meetings will be communicated through the Clerk of Council's Office. For the official record purposes, a motion of Council to excuse a member's absence must be passed by a simple majority vote.

Unexcused absences from three (3) consecutive Regular City Council Meetings may result in the removal of a Councilmember. A two-thirds (2/3) majority of the Councilmembers then holding office, exclusive of the Councilmember being considered for removal, is required (Section 13.08, City Charter).

In the event a Councilmember(s) is absent or is not present for a vote on a resolution, or an ordinance scheduled for a vote of Council at a properly scheduled and publicly noticed City Council Meeting, such Councilmember(s) will be deemed to have voted against the resolution or the ordinance put to a vote at such meeting in which the Councilmember(s) was not present. Any such vote(s) deemed against a resolution or any ordinance under this provision on an adopted resolution or ordinance shall be recorded on the resolution or the ordinance and on the legislative journal as a nay vote(s).

A Councilmember or the Mayor may be expelled from a Council meeting for disorderly conduct or violation of the Rules of Council by a vote of a two-thirds (2/3) majority of Councilmembers. Expulsions are considered unexcused absences.

AI-8526

**New Business G.
City Council**

City Council Meeting

Meeting Date: 07/11/2022

Culture and Diversity Needs Assessment

Submitted By: Bryan Chodkowski

Department: City Council

Council Committee Review?: Council **Date(s) of Committee Review:** 07/05/2022
Work
Session

Audio-Visual Needs: None **Emergency Legislation?:** No

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

A Resolution Affirming The Adoption Of Resolution No. 2021-R-6960 Directing The City Manager To Solicit Qualifications From Firms To Conduct A Community Needs Assessment.
(first reading)

Purpose and Background

In accordance with the direction provided by City Council, as supported by the Culture and Diversity Citizens Action Commission, this legislation brings the matter of the Community Needs Assessment Request for Qualification to completion; affirming the City Manager's authorization to solicit professional firms for such work.

Fiscal Impact

Source of Funds: N/A

Cost: N/A

Recurring Cost? (Yes/No): N/A

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

Attachments

Resolution No. 2021-R-6960

Resolution

Exhibit A

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2021-R-6960

AUTHORIZING THE CITY MANAGER TO SOLICIT, ADVERTISE AND RECEIVE STATEMENTS OF QUALIFICATIONS FROM FIRMS TO CONDUCT A COMMUNITY NEEDS ASSESSMENT REGARDING INCLUSIVITY, DIVERSITY, EQUALITY AND EQUITY.

WHEREAS, the City Council has created and appointed the Huber Heights Culture and Diversity Citizens Action Commission to act in an advisory capacity to promote equal opportunity and full exercise of civil rights for all persons without discrimination and to increase inclusivity and awareness of civil and human rights; and

WHEREAS, the Culture and Diversity Citizens Action Commission has recommended a community needs assessment to focus on inclusivity, diversity, equality and equity is needed to identify the needs of the community and to prioritize the actions, programs and services needed to meet the goals of the Commission and the City; and

WHEREAS, the City Council has agreed to a process of which the scope will be developed by the Culture and Diversity Citizens Action Commission and facilitated by City Staff to identify the best qualified firm to conduct the needs assessment.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio that:

Section 1. The City Manager is hereby authorized to solicit, advertise and receive Statements of Qualifications from firms to conduct a community needs assessment regarding inclusivity, diversity, equality and equity.

Section 2. After receipt of all Statements of Qualifications, the responses will be reviewed and rated in accordance to the procedures set forth in the published Request For Qualifications (RFQ), and the top three (3) responses will be then solicited for proposals to conduct the needs assessment.

Section 3. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were taken in meetings open to the public and in conformance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 4. This Resolution shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the 25th day of January, 2021;
8 Yeas; 0 Nays.

Effective Date: January 25, 2021

AUTHENTICATION:


Clerk of Council

1-27-21
Date


Mayor

1-27-21
Date

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2022-R-

AFFIRMING THE ADOPTION OF RESOLUTION NO. 2021-R-6960 DIRECTING THE CITY MANAGER TO SOLICIT QUALIFICATIONS FROM FIRMS TO CONDUCT A COMMUNITY NEEDS ASSESSMENT.

WHEREAS, the Huber Heights City Council desires to promote inclusivity, diversity, equality, and equity within the City; and

WHEREAS, in furtherance of this desire, it is necessary and appropriate to benchmark the perceptions and understanding of all its citizens on the matters of inclusivity, diversity, equality, and equity; and

WHEREAS, it has been determined a Needs Assessment conducted by a professional firm identified through a Request For Qualifications (RFQ) solicitation is the most appropriate way to benchmark such perceptions and understanding; and

WHEREAS, the Culture and Diversity Citizen Action Commission has completed its review of City Staff's proposed Request For Qualifications (RFQ) document; and

WHEREAS, the Culture and Diversity Citizen Action Commission's final draft of the Request for Qualifications was submitted to the City on July 8, 2022, and attached hereto as Exhibit A; and

WHEREAS, the submittal of the Culture and Diversity Citizen Action Commission's final draft of the Request For Qualifications (RFQ) enables the City Manager to act as previously authorized by Resolution No. 2021-R-6960.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio that:

Section 1. The direction provided to the City Manager pursuant to Resolution No. 2021-R-6960 is hereby affirmed and the City Manager is directed to execute such action with all reasonable and practical attention.

Section 2. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were in meetings open to the public and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 3. This Resolution shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the _____ day of _____, 2022;
_____ Yeas; _____ Nays.

Effective Date:

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

EXHIBIT A

CITY OF HUBER HEIGHTS COMMUNITY NEEDS ASSESSMENT

REQUEST FOR QUALIFICATIONS

City of Huber Heights
Office of the City Manager
ATTN: Bryan RH Chodkowski –
Interim City Manager
of Administrative Services
6131 Taylorsville Rd.
Huber Heights, OH 45424

**Request For Qualifications
Community Needs Assessment
City of Huber Heights**

City of Huber Heights

**REQUEST FOR QUALIFICATIONS FOR
THE PERFORMANCE OF A COMMUNITY NEEDS ASSESSMENT**

I. General Information

The City of Huber Heights (hereinafter “City”) requests proposals from consultant firms, non-profits, and other organizations with expertise in providing professional consulting services for the purposes of conducting a Community Needs Assessment focusing on Diversity, Equity, and Inclusion (DEI). The City recognizes that racial inequities in access and opportunity, and across key indicators for success, are deep and pervasive for communities of color. The city also recognizes that government – at the local, state, and federal level – has played a historical role in creating and maintaining racial inequity. This is accomplished through a wide range of laws and policies controlling who could vote, who could be a citizen, who could own property, where one could live, where children could go to school, and more. These historical racial inequities persist today and are demonstrated through issues such as underperforming schools, disproportionate contact with our criminal justice system, limited formation, and growth of minority owned businesses and concentrated poverty among others.

II. City of Huber Heights Culture and Diversity Citizens Action Commission

In June, 2020, the City established the Culture and Diversity Citizens Action Commission (hereinafter “Commission”) by passing Resolution No. 2020-R-6884. As an advisory entity to City Council, the Commission works to better connect, educate, and advise the City Council on all matters which promote equal opportunities to the under-represented members of the City. Our mission is to promote equal opportunity and full exercise of civil rights for all persons in the community that the Commission represents.

The Commission's responsibilities include providing recommendations to the City Council that minimize the impacts of civil rights conflicts and promote appreciation of diversity within the city. To meet these goals, the Commission assists with education and cultural awareness that promote global thinking, encourage civil rights and human rights awareness, and reflect the diversity found within the City.

III. Mission

The Commission established the Advocacy Committee, Education Committee, Outreach Committee, and Reform Committee to develop solutions and recommendations for the City. The purpose of each Committee are as follows:

Advocacy Committee: The Advocacy Committee's purpose is in alignment with the Huber Heights Culture and Diversity Citizen Commission’s Mission and the committee will serve to increase public and political awareness to issues that affect marginalized groups within the Huber Heights Community. The Advocacy Committee will promote diversity, racial equity and inclusion through advocacy and activism. Advocacy events will include rallies and marches, letter writing campaigns, supporting, and advancing issues brought to the Advocacy Committee

Request For Qualifications Community Needs Assessment City of Huber Heights

by the Reform, Education and Outreach Committees of the Huber Heights Culture and Diversity Citizen Action Commission.

Education Committee: The mission of the Commission's Education Committee is to unify the citizens of Huber Heights in comprehending and appreciating the culture and diversity within the community through (1) public forums; (2) educational seminars; and (3) online resources. Public forums and educational seminars would be opened to citizens/city employees of Huber Heights on various topics such as diversity, sensitivity training, and diversity/inclusion. Online resources (i.e. published articles, websites, and online webinars) pertaining to culture/diversity issues/initiatives would be accessible to the Huber Heights community for reference.

Outreach Committee: The purpose of the Outreach Committee is to identify opportunities to connect the Commission to the greater Huber Heights community, its groups, activities, and the multicultural citizens served by the Commission. The outreach activities sought by the committee will be those in the community that bring together all people to learn about each other and make the place that we live, work, and relax even better. The Outreach Committee will sponsor and direct some activities, while sourcing external opportunities in which to champion and advocate.

Reform Committee: The purpose of the Reform Committee is to develop and propose policy changes that promote diversity and inclusion that ensure fair treatment and opportunity for all citizens regardless of demographic background.

IV. Purpose

The Commission is seeking proposals from qualified consultants to conduct a community Diversity, Equity, & Inclusion (DEI) analysis and to create a city-wide DEI plan of action. The deliverables will at least include a DEI Needs Assessment and DEI Strategic Plan. The DEI Strategic Plan will assist in guiding priorities, policy development and future opportunities along with strategic vision to ensure the City continues to be a leader in DEI.

V. Scope of Services/Project Objectives

One of the key efforts of the Commission is to work toward having an inclusive community that is welcoming to all cultures, races, and ethnicities. The Commission is interested in obtaining data related to meeting the functions of each Committee.

This project includes:

- a) Consultation with a team of stakeholders to do an initial community overview and develop collaborative data gathering process.
- b) Conduct and supervise the data gathering process, to include qualitative and quantitative data.
- c) Generate a report, with quantitative and qualitative results to include recommendations for action that will improve equity outcomes in Huber Heights.
- d) Creation of a Diversity, Equity, and Inclusion strategic plan.

**Request For Qualifications
Community Needs Assessment
City of Huber Heights**

VI. Deliverables

1) DIVERSITY NEEDS ASSESSMENT

The qualified contractor will be responsible for the coordination of a fully completed Community Diversity Needs Assessment that includes specific data and analysis in addition to the following:

- a) An Executive Summary,
- b) Collection of demographic data and analysis of population currently residing in the City from multiple sources. This description should include, but is not limited to data from the Census, school districts, local colleges, social service agencies and public health department. Additional data may be collected conducting community forums, focus group meetings, community partner surveys, client surveys and business owner surveys,
- c) Consultation with a team of stakeholders to do an initial community overview and develop collaborative data gathering process. Designated city staff personnel, along with the assistance of the Commission, will identify persons for key informant interviews and focus groups should be conducted to contextualize research findings. Focus groups may need to be conducted in other languages, including Spanish and Turkish.
- d) Customer, staff, and community input on the existence and impacts of systemic and institutionalized racism and cultural biases within the communities and recommendations for further addressing those needs,
- e) An in-depth explanation and analysis on the impact of systemic and institutionalized racism and cultural bias and its effect on the residents of the City of Huber Heights,
- f) Provide the collection and analysis of the following information about the City's services areas including:
 - i. An analysis of information collected directly from minority individuals (including residents, employees, businesses, and other key stakeholders) to assess needs and resources; and
 - ii. Collection of information from key sectors of the community to assess needs and resources. These sectors would include at minimum: community-based organizations, faith-based organizations, private sector, public sector, and educational institutions; and
 - iii. Collection of current data specific to racism and cultural bias and its prevalence related to gender, age, and disability; and
 - iv. Collection and analysis of both qualitative and quantitative data that is collected; and
 - v. Description of key findings on the causes, conditions and impact of racism and cultural bias in the community.
- g) Provide the collection and analysis of demographic, data and economic trends including, but not limited to:
 - i. Population trends; and
 - ii. Location of minority and underrepresented groups; and
 - iii. Age trends; and
 - iv. Household composition; and

**Request For Qualifications
Community Needs Assessment
City of Huber Heights**

- v. Housing data: rental vs. ownership/affordable housing availability; and
 - vi. Transportation; and
 - vii. Accessibility of City services.
 - h) The contractor, utilizing the information obtained through its data and information gathering efforts, shall identify programs and needs within the community which are, whether real or perceived, negatively impacted by systemic and/or institutionalized racism and/or cultural biases. This exercise should attempt to forecast and identify future program and need trends. The gap analysis should prioritize community services the City should address because of research.
- 2) The City would also like a proposal to conduct an organization wide racial equity audit of the organization's internal documents, data, policies, and external communications as they reflect and/or pertain to the City's goal to eliminate institutional bias and build equitable policies and language to improve racial equity in the City.
- 3) The qualified consultant will be responsible for the following areas:
- a) **ACTION PLAN:** Develop a Racial Equity Action Plan to develop strategies to create a diverse, equitable, and inclusive workplace and city. Develop goals and community indicators (performance measures) to assist in reaching and supporting desired outcomes and objectives that are appropriate for success. The consultant will be expected to explicitly identify opportunities for improvement with suggestions regarding how to operationalize those improvements.
 - b) **ENGAGEMENT:** Advise and recommend outreach strategies to engage key stakeholders to ensure the strategies outlined in the Racial Equity Action Plan are targeted, intentional and have maximum impact. Advise and recommend on how to engage the community at-large in order to inform residents and stakeholders of the content and goals within the created Racial Equity Action Plan as it relates to the community as a whole, as well as to foster dialogue about the challenges and opportunities involved in implementing the plan. The goal is to ensure stakeholders have an opportunity to help with the implementation of the external strategy as well as by building awareness of the plan within the community.
 - c) **CAPACITY BUILDING:** The consultant may provide training/workshops for staff members and City leadership (City Council, Mayor, City Manager). In addition, the consultant may provide coaching techniques, tips, and/or resources for supervisors and city leaders to embed a racial equity lens in day-to-day work for their teams. These resources shall include racial equity analysis tools that can be used to assist in integrating racial equity into routine decision making, and which can subsequently be applied to programs, policies, and initiatives. The consultant may also provide training/workshops for the community and key stakeholders.
 - d) **WRITTEN DOCUMENTS AND TRAINING MATERIALS:** The consultant will have the ability and latitude to produce written documents in the form of PowerPoint presentations; training materials; summarizing documents that articulate key take-aways from meetings; recommendations to inform future strategic decision making; among other materials which are high-quality, easy to understand and professionally presented.

4) Conclusions

Presentations to City Council and the Commission

VII. Submission Requirements and Evaluation Criteria

1) *Submission Requirements/Format*

a) **Executive Summary**

- i. Responses shall include a summary overview of the respondent's proposal and other pertinent information. Such summaries are to be no more than 2 pages in length.

b) **Company Qualifications**

Firm Profile

- a) Firm name, corporate address, and local address.
- b) Main contact person with full contact information.
- c) Provide information specifying legal business classification, state of incorporation, and other pertinent information affirming position as a business in good legal standing.
- d) Address the organization's ability to fulfill the terms and conditions of the RFQ including to general project timeframes and phasing of work.
- e) Those firms who identify themselves as professionally accredited or certified in areas which they believe demonstrate further qualification to perform the scope of work outlined in the RFQ shall provide copies of such accreditation or certification as part of their RFQ response.

c) **Project Team and Experience**

Project Team

- i. Concise resumes of project team members including education, past project experience, and any other pertinent information which demonstrate qualifications. Roles and responsibilities of each team member.
- ii. Subcontractors or partners may be listed as part of your team but must be clearly identified.
- iii. Provide an organizational chart that illustrates the structure and roles of your project team members.

Experience and References

- i. List similar needs assessments completed by the respondent over the past 5 years that are representative of the scope and requirements of the City in this request.

d) **Insurance and Bonding**

Provide evidence that prior to award of contract the respondent shall be able to complete the work outlined in an appropriately professional manner.

**Request For Qualifications
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Provide evidence of applicable insurance in types and amounts that are commercially reasonable and appropriate with minimum coverages and limits as follows:

- Worker's Compensation (statutorily imposed minimum limits)
- Commercial General Liability (\$1M per occurrence / \$2M annual aggregate)
- Automobile Liability (\$1M combined single limit)
- Professional Liability (\$2M per claim / \$2M annual aggregate)

e.) Technical Approach and Methodology

i. Responses should include a general overview description regarding respondents' approach to meeting the goals and objectives of this request with respect to information and data gathering as well as survey and polling activities. Provide an overview of the technical approach that is used to identify, evaluate, and recommend energy conservation measures.

f.) Letter of Transmittal.

i. Each proposal shall include a letter of transmittal that indicate the respondent's proposal is a valid offer to provide services in accordance with the RFQ requirements and that the respondent will comply with the terms of the RFQ.

2) Evaluation Criteria

All responses will be evaluated for completeness and clarity of information. Missing information or unresponsiveness in an area may be cause for elimination of the response altogether.

The Commission's evaluation will consider the criteria listed below evaluating respondent proposals. These categories may not be weighted equally but rather on importance and significance to the contemplated project or program, based on the Commission's good judgment and discretion.

- a) Firm qualifications
- b) Project team members' experience and references
- c) Technical approach/process methodology and financial approach
- d) Measurement and verification approach
- e) Other benefits

During evaluation, the Commission reserves the right, where it may serve the City's best interest, to request additional information or clarification from the respondent, or to allow corrections of errors or omissions.

Oral interviews may be conducted by the City Review and Selection Committee for the Contractors who submit a Proposal and were short listed.

**Request For Qualifications
Community Needs Assessment
City of Huber Heights**

VIII. Selection Process and Timing

The following process will be used to select the preferred proposal:

Issuance of RFQ	July 22, 2022
RFQ Due	August 26, 2022
Interviews	September 19, 2022 (week of)
Selection of Provider	October 10, 2022

The Commission will review and evaluate all proposal, interviewing not more than three (3) selected firms. Following interviews, the Commission will forward all appropriate information and its recommendation of the best qualified firm to the Huber Heights City Council. Following review and debate of the materials provided by the Commission the City Council will direct to staff to negotiate a contract for services, based upon the scope detailed within the RFQ, with the respondent deemed by City Council as the best most appropriate.

IX. Contact and Response Deadline

To be considered, respondents must submit a complete and thorough response to this RFQ. An electronic copy must be submitted via email to the City contact provided below on or before 5:00 PM local time August 26, 2022

Responses shall be no longer than a total of 25 written pages in length, including cover page and detailed resumes. A sample agreement should be included as a separate attachment and is not included in the 25-page limit.

City of Huber Heights
Bryan RH Chodkowski
Assistant City Manager
bchodkowski@hhoh.org
937-237-5834

All contacts and communication regarding the proposal should be with the above-named individual only. Bidders contacting other City Staff or Officials may be disqualified for doing so.

X. Response Preparation and Completeness

All information requested must be submitted and organized in the format requested. Failure to submit all information as requested may result in the requester requiring immediate submission of the missing information and/or elimination of the respondent from consideration. Emphasis should be placed on completeness and clarity of content.

**Request For Qualifications
Community Needs Assessment
City of Huber Heights**

XI. Confidentiality

In order to ensure fair and impartial evaluation, and in order to protect against the unintentional disclosure of proprietary trade secret material, proposals and related documents submitted in response to the RFQ are not available for public inspection and copying until after an identified respondent is under contract with the City to provide the scope of services as outlined herein.

XII. RFQ Clarification

Respondents shall provide any questions concerning this RFQ via email to the City's point of contact listed above, at least 5 days before the submission deadline established herein. Answers to such questions will be communicated to all respondents at least 3 business days prior to the response deadline noted herein.

The City of Huber Heights reserves the right to reject any or all proposals and to award to the proposer the City determines to be most qualified and whose award of the contract will be in the best interests of the City.

Minority-owned, women-owned, and emerging small businesses are encouraged to apply for this opportunity.

AI-8475

**New Business H.
City Council**

City Council Meeting

Meeting Date: 07/11/2022

RZ 22-17 - Michael Skilwies - Rezoning/Replat - 9416 Taylorsville Road - Public Hearing

Submitted By: Geri Hoskins

Department: Planning **Division:** Planning

Council Committee Review?: Committee of the Whole **Date(s) of Committee Review:** 07/05/2022

Audio-Visual Needs: SmartBoard **Emergency Legislation?:** No

**Motion/Ordinance/
Resolution No.:** N/A

Agenda Item Description or Legislation Title

A Public Hearing Scheduled For July 11, 2022 By The Huber Heights City Council For Case RZ 22-17. The Applicant Is Michael Skilwies. The Applicant Is Requesting Approval Of A Replat And A Rezoning Of 3.55 Acres From Agricultural (A) To Planned Industrial (PI) To Allow The Continued Operation Of A Truck, Diesel And Heavy Equipment Repair Business For Property Located At 9416 Taylorsville Road And Further Described As Parcel Number P70 03902 0018 On The Montgomery County Auditor's Map.

Purpose and Background

The applicant, Michael Skilwies, is requesting approval of a Replat and Rezoning to PI (Planned Industrial) for property located at 9416 Taylorsville Road (RZ 22-17).

Fiscal Impact

Source of Funds: N/A

Cost: N/A

Recurring Cost? (Yes/No): N/A

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

Attachments

No file(s) attached.

AI-8522

**New Business I.
City Manager**

City Council Meeting

Meeting Date: 07/11/2022

Case RZ 22-17 - Michael Skilwies - Rezoning/Replat - 9416 Taylorsville Road

Submitted By: Geri Hoskins

Department: Planning

Division: Planning

Council Committee Review?: Council Work Session
Date(s) of Committee Review: 07/05/2022

Audio-Visual Needs: SmartBoard **Emergency Legislation?:** No

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

An Ordinance To Approve A Rezoning From Agricultural (A) To Planned Industrial (PI) And A Lot Split For The Property Located At 9416 Taylorsville Road And Further Identified As Parcel Number P70 03902 0018 On The Montgomery County Auditor's Map And To Not Accept The Recommendation Of The Planning Commission (Case RZ 22-17).
(first reading)

Purpose and Background

The applicant, Michael Skilwies, is requesting a replat and rezoning of 3.55 acres from Agriculture (A) to Planned Industrial (PI).

Fiscal Impact

Source of Funds: N/A

Cost: N/A

Recurring Cost? (Yes/No): N/A

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

Attachments

Drawings

Staff Report

Decision Record

Minutes

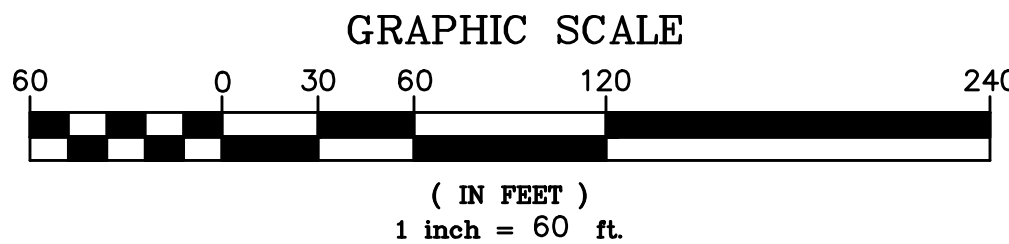
Ordinance

RECORD PLAN
SKILWIES PLAT NO. 1

AND BEING A PLAT OF A PARCEL
LOCATED IN SECTION 5, TOWN 2, RANGE 8 M.Rs.

CITY OF HUBER HEIGHTS
MONTGOMERY COUNTY, OHIO
CONTAINING 4.9995 ACRES

MAY 4, 2022



BASIS OF BEARINGS:

- CENTERLINE OF TAYLORSVILLE ROAD -
S87°34'44"E - SUR. VOL. 2014, PAGE 0393

SURVEY REFERENCES:

- ALL DEEDS, PLATS AND SURVEY RECORDS
SHOWN ON THE FACE OF THIS SURVEY.

GENERAL NOTES:

- OCCUPATION, IN GENERAL, FITS THE SURVEY.
- ALL MONUMENTS WERE FOUND OR SET IN GOOD CONDITION.

SUPERIMPOSED NOTE:

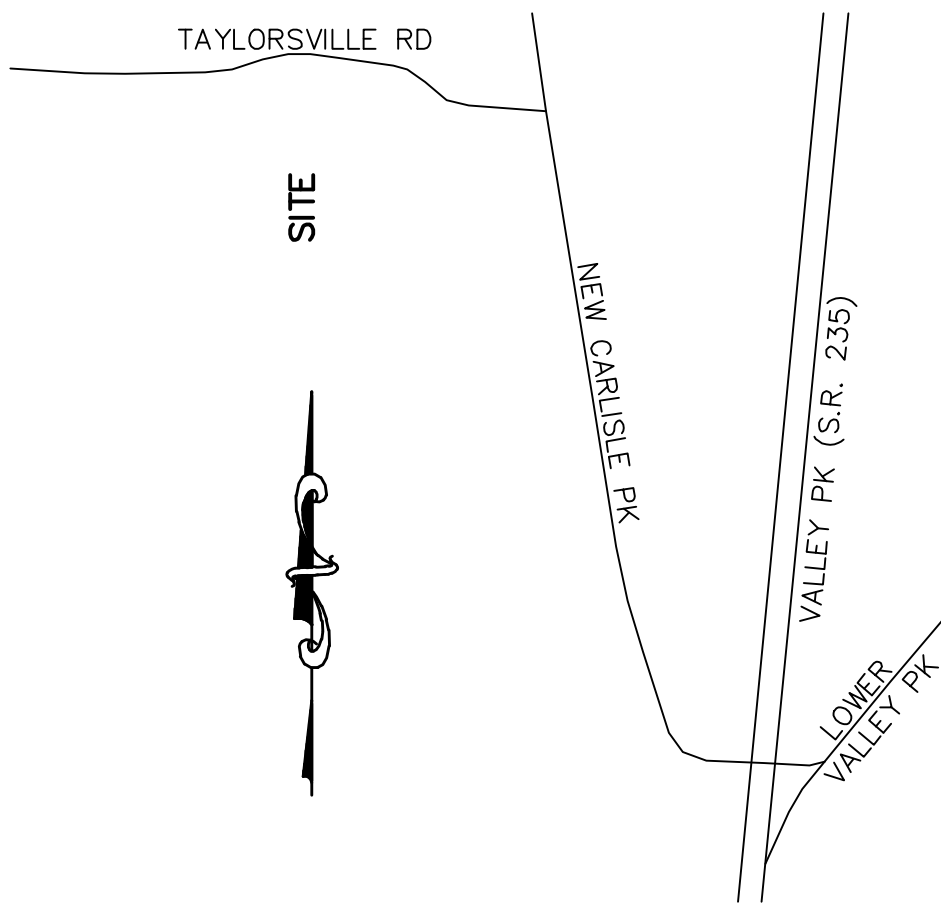
- ALL OF THE LANDS OF THE DEDICATORS, OF WHICH THIS PLAT
IS DRAWN, ARE SHOWN HEREON.

DESCRIPTION:

SITUATE IN SECTION 5, TOWN 2, RANGE 8 M.Rs, CITY OF HUBER HEIGHTS,
COUNTY OF MONTGOMERY, STATE OF OHIO AND BEING ALL OF A 5.000
ACRE TRACT CONVEYED TO MICHAEL A. AND KELLY SKILWIES IN DEED
12-070719.

CONTAINING 4.9995 TOTAL ACRES WITH 4.8390 ACRES IN LOTS AND
0.1605 ACRES IN NEWLY DEDICATED RIGHT-OF-WAY.

LINE TABLE		
LINE	BEARING	LENGTH
L1	N75°38'59"E	64.82'
L2	S87°34'44"E	135.13'
L3	N75°38'59"E	41.43'
L4	N75°38'59"E	27.68'
L5	S87°34'44"E	130.38'



VICINITY MAP
(NO SCALE)

DEDICATION:

We the undersigned, being all the owners and lien holders of the lands
herein subdivided, do hereby acknowledge the making and signing of this
instrument to be our voluntary act and deed and do hereby dedicate the
street and reserve the easements as shown within the plat to the public
use forever. New easements shown on the within plat are reserved for the
construction, operation, maintenance, repair and replacement of water,
sewer, gas, electric, telephone or other utility lines or services and for the
express privileges of removing any and all trees or other obstructions to
the free use of said utilities, and for providing ingress and egress from
the premises for said purposes, and are to be maintained as such forever.

OWNERS:

WITNESSES:

Print Name:

MICHAEL A. SKILWIES

Print Name:

KELLY SKILWIES

Michael A. Skilwies, Owner, being duly sworn, says that all persons
and corporations, to the best of his knowledge, interested in
this dedication, either as owners or lien holders, have united
in its execution.

MICHAEL A. SKILWIES

LOT ACREAGE BREAKDOWN
4.8390 ACRES IN LOTS
0.1605 ACRES IN DEDICATED R/W
4.9995 ACRES TOTAL

SYMBOL LEGEND

⊠	FOUND RAILROAD SPIKE
⊞	FOUND PK/MAG NAIL
⊙	FOUND 5/8" IRON PIN
⊕	FOUND 5/8" IRON PIN W/"HALEY-DUSA" CAP
⊘	SET MAG NAIL
●	SET 5/8" IRONP IN W/"HALEY-DUSA" CAP

APPROVED FOR DESCRIPTION

ENGINEER OF MONTGOMERY COUNTY

2022-0178RE

JOB NO.

CHECKED BY

DATE

PLANNING COMMISSION:

Approved by the City of Huber Heights Planning Commission on
this ____ day of _____, 20__.

By:

STATE OF OHIO, COUNTY OF MONTGOMERY, SS:

Be it remembered that on this ____ day of _____, 2022, before me
the undersigned, a notary public in and for said State of Ohio, personally
came Michael A. and Kelly Skilwies, Owners, and acknowledged the signing
and execution of the within plat to be their voluntary act and deed.

In testimony whereof, I hereunto set my hand and notary seal on
the day and date above written.

NOTARY PUBLIC

MY COMMISSION EXPIRES

In testimony whereof, I hereunto set my hand and notary seal on
the day and date above written.

NOTARY PUBLIC

MY COMMISSION EXPIRES

CERTIFICATION:

I hereby certify that this plat was prepared in accordance with Ohio
Administrative Code Chapter 4733.37 Standards for Surveys and also
conforms to the Ohio Revised Code Chapter 711 for Record Plans and
was conducted under my supervision based on field work in March of
2022. All measurements are correct and monuments are to be set on
all lot corners as shown.

Thomas E. Dusa, P.S.
OHIO LICENSE NO. S-7143

PREPARED BY:



Haley-Dusa
Engineering & Surveying Group, LLC
270 Regency Ridge Drive, Suite 203
Dayton, Ohio 45459
Phone: (937) 439-4300 Fax: (937) 439-2005
Email: haleydusa@haleydusa.com
Website: www.haleydusa.com

Scale: 1"=60'

Drawn: SBM

Checked: TED

Date: 05-04-2022

Job No. S4916

5.00 ACRES
CYNTHIA A. ROSENGARTEN & TODD R. WALTHER
IR DEED 21-044143

5.00 ACRES
RACHEL M. & ROSS S. GOODSPEED
IR DEED 20-041639

LOT
3.5363 ACRES TOTAL

MICHAEL A. AND KELLY SKILWIES
IR DEED 12-070719

23.878 ACRES
ALBERT J. MURN
DEED MF 78-521A09
SUR. REC. 3-M-791

Memorandum

Staff Report for Meeting of May 24, 2022

To: Huber Heights City Planning Commission

From: Aaron K. Sorrell, Interim City Planner
Community Planning Insights

Date: May 18, 2022

Subject: RZ 22-17 Request to Replat and Rezone 3.55 Acres from Agriculture to
Planned Industrial

Application dated March 28, 2022

Department of Planning and Zoning

City of Huber Heights

APPLICANT/OWNER: Michael Skilwies – Applicant / Owner

DEVELOPMENT NAME: N/A

ADDRESS/LOCATION: 9416 Taylorsville Rd.

ZONING/ACREAGE: A – Agricultural (5 acres)

EXISTING LAND USE: Residential

**ZONING
ADJACENT LAND:** Agricultural

REQUEST: The applicant requests approval of a replat and rezoning of 3.55 acres from Agriculture to Planned Industrial to allow the continued operation of their truck, diesel and heavy equipment repair business.

ORIGINAL APPROVAL: N/A

APPLICABLE HHCC: Chapter 1109, 1171, 1177

CORRESPONDENCE: In Favor –
In Opposition –

STAFF ANALYSIS AND RECOMMENDATION:

Overview:

The applicant has been operating a truck and heavy equipment repair business at this location for many years. Based on complaints received in August 2021, Zoning staff-initiated enforcement action on the applicant's business based on the fact that non-farm related truck and heavy equipment repair is not permitted in the Agricultural District. In August 2021 the applicant requested a use variance for the diesel truck and equipment repair operations. The BZA unanimously denied the application at their October 6, 2021 meeting.

The applicant was provided with the lot split and rezoning application shortly after the BZA decision as an alternative path to allow the continued operation of the repair facility. On or about March 28, 2022 Zoning staff filed minor misdemeanor charges for the continued operation of repair facility and the applicant subsequently filed the application for a lot split and rezoning.

Applicable Subdivision and Zoning Regulations

The applicable subdivision regulations include: 1109 Subdivision Design Standards

The applicable zoning chapters include: 1171 General Provisions, 1177 Planned Industrial District. The relevant sections are cited and discussed below:

Chapter 1109 Subdivision Design Standards

1109.01 General statement.

The regulations in Sections 1109.02 to 1109.22, inclusive, shall control the manner in which streets, lots and other elements of a subdivision are arranged on the land. These design controls shall help ensure convenient and safe streets, creation of usable lots, provision of space for public utilities and reservation of land for recreational uses. The planning of attractive and functional neighborhoods shall be promoted, minimizing the undesirable features of unplanned, haphazard growth.

The City Planning Commission has the responsibility for reviewing the design of each future subdivision early in its design development. The Commission shall ensure that all of the requirements of Sections 1109.02 to 1109.22, inclusive, are met.

1109.02 Conformity to development plans and zoning.

The arrangement, character, width and location of all thoroughfares or extensions thereof shall conform with the City's Official Thoroughfare Plan. Thoroughfares not contained in the aforementioned plan shall conform to the recommendation of the City Planning Commission based upon the design standards set forth in Sections 1109.03 to 1109.14, inclusive. In addition, no final plat of land within the area in which an existing Zoning Ordinance is in effect shall be approved unless it conforms with such Ordinance.

1109.03 Suitability of land.

If the City Planning Commission finds that land proposed to be subdivided is unsuitable for subdivision development due to flooding, bad drainage, topography, inadequate water supply, schools, transportation facilities and other such conditions which may endanger health, life or property; and, if from investigations conducted by the public agencies concerned, it is determined that in the best interest of the public the land should not be developed for the purpose proposed, the Commission shall not approve the land for subdivision unless adequate methods are advanced by the subdivider for solving the problems that will be created by the development of the land.

1109.17 Lots.

The following regulations shall govern the design and layout of lots:

- (a) The lot arrangement and design shall be such that all lots shall provide satisfactory building sites, properly related to topography and the character of surrounding development.
- (b) All lots shall conform to or exceed the requirements of these subdivision regulations and the zoning district requirements for the district in which they are located and the use for which they are intended.
- (c) Where no public utilities exist, the lots shall meet the requirements of the Montgomery County Board of Health.
- (d) All side lots shall be at right angles to street lines and radial to curved street lines, except where the City Planning Commission determines that a variation to this rule would provide a better layout.
- (e) Lots with double frontage shall be avoided except where the Commission determines that it is essential to provide separation of residential development from arterial streets.
- (f) No corner lot shall have a width at the building line of less than 75 feet, except as authorized by the Zoning Ordinance.
- (g) Except as provided in Section 1109.17(i) the maximum depth of a lot shall not be greater than three times the width of the lot, except lots which contain an area of five acres or more. Lots containing over five acres shall not be less than 200 feet in width at any location; they should be of such shape and dimensions as to render the possible resubdivision of any such parcels at some later date into lots and streets which meet the requirements of these regulations, except as authorized in Chapter 1143.
- (h) Additional lot depth may be required where a residential lot in a subdivision backs up to a railroad right-of-way, a high-pressure gasoline or gas line, open drainage ditch, an arterial street, an industrial area or other existing land use which may have a detrimental effect on the residential use of the property, and where no street is provided at the rear of such lot. Where a residential lot has its side lot line adjacent to any of the aforementioned an appropriate additional width may also be required.
- (i) The minimum lot size where public sewer or water is not available shall be one acre with a minimum frontage of 200 feet.

Where soil conditions are of such nature that proper operation of wells and septic systems may be impaired, the City Planning Commission may increase the size of any or all lots in the subdivision.

Where soils are classified as prime agricultural soils as defined in these regulations, or are adjacent to prime agricultural soils, the Commission may permit the alteration of these requirements where the subdivider demonstrates that such alteration is necessary and desirable in order to preserve the prime agricultural soils, provided that the subdivision is not contrary to applicable zoning regulations

Chapter 1171 General Provisions

1171.01 Purpose.

Planned Unit Developments Districts may be permitted as amendments to the zoning map, after application and approval of specific and detailed plans, where tracts suitable in location and character for the uses and structures proposed are to be planned and developed as units. The provisions of this chapter are adopted to unify planning and development in such districts. Applications for rezoning of land into a Planned Unit Development District shall be granted only when the basic development plan for the project is such that the public health, safety and morals shall not be jeopardized by a departure from the restrictions on corresponding uses in the standard zoning district. PUD rezonings may be approved only when a basic development plan for the area has been approved by Council. A detailed development plan shall then be approved for zoning permit to be approved for development in the District. Normally the detailed development plan shall be approved by the Planning Commission after the rezoning and basic development plan have been approved by Council. Owners shall have the option however, of submitting a combined basic and detailed development plan ("combined development plan") if they should so desire for some or all of the site.

(Ord. 93-O-602, Passed 3-22-93)

1171.05 Contents of basic development plan.

- (a) The basic development plan shall consist of at least the following information together with such other data and materials as may be required by the City:*
 - (1) Site plan showing the actual shape and dimensions of the lot to be built upon or to be changed in its use together with the location of the existing and proposed structures with approximate square footages, number of stories including heights of structures;*
 - (2) Typical elevation views of the front and side of each type of building;*
 - (3) Planning location and dimensions of all proposed drives, service access road, sidewalks and curb openings;*
 - (4) Parking lot areas (show dimensions of a typical parking space), unloading areas, fire lanes and handicapped parking;*
 - (5) Landscaping plan, walls and fences;*
 - (6) Storm water detention and surface drainage;*
 - (7) Exterior lighting plan;*
 - (8) Vehicular circulation pattern;*
 - (9) Location and square footage of signs;*
 - (10) Topographic survey; and*
 - (11) Listing of proposed uses taken from the list of permitted and special uses of the PUD zoning district to which rezoning is being sought.*
- (b) The Planning Commission shall schedule both the proposed rezoning and the issue of approval of the basic development plan for a combined public hearing, following which it shall make its recommendation indicating approval, approval with modification or disapproval.*

(Ord. 2006-O-1655, Passed 9-25-05)

1171.06 General standards for approval.

The Planning Commission shall review the application, prepared development plan and the facts presented at the hearing. The applicant shall have the burden of proof. No approval shall be given unless the Commission shall find by a preponderance of the evidence that such PUD on the proposed locations:

- (a) Is consistent with official thoroughfare plan, comprehensive development plan and other applicable plans and policies;
- (b) Could be substantially completed within the period of time specified in the schedule of development submitted by the developer;
- (c) Is accessible from public roads that are adequate to carry the traffic that shall be imposed upon them by the proposed development. Further, the streets and driveways on the site of the proposed development shall be adequate to serve the residents or occupants of the proposed development;
- (d) Shall not impose an undue burden on public services such as utilities, fire and police protection, and schools;
- (e) Contains such proposed covenants, easements and other provisions relating to the proposed development standards as may reasonably be required for the public health, safety and welfare;
- (f) Shall be landscaped or otherwise improved and the location and arrangement of structures, parking areas, walks, lighting and appurtenant facilities shall be compatible with the existing intended uses, and any part of a PUD not used for structures, parking and loading areas, or accessways;
- (g) Shall preserve natural features such as water courses, trees and rock outcrops, to the degree possible, so that they can enhance the overall design of the PUD;
- (h) Is designed to take advantage of the existing land contours in order to provide satisfactory road gradients and suitable building lots and to facilitate the provision of proposed services;
- (i) Shall place underground all electric and telephone facilities, street light wiring and other wiring conduits and similar facilities in any development which is primarily designed for or occupied by dwellings, unless waived by the Commission because of technical reasons;
- (j) Shall not create excessive additional requirements at public cost of public facilities and services and shall not be detrimental to the economic welfare of the community;
- (k) Shall not involve uses, activities, processes, materials, equipment and conditions of operation that shall be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors; and
- (l) Rezoning of the land to the PUD District and approval of the development plan shall not adversely affect the public peace, health, morals, safety or welfare.

1171.091 Planning commission/council review.

It is the purpose of the Planning Development regulations to encourage property owners to develop their land in efficient and effective ways. It is the intent of these regulations to encourage land uses which may not always meet traditional zoning rules. Inherent in these Planned Development regulations is an opportunity for property owners to develop their sites without requiring strict compliance with all zoning regulations where the overall plan is deemed to be in the best interest of the City. During review of a Basic or Detailed Development Plan by the Planning Commission or City Council, all requirements within Part 11, Title 7 of the Code are to be used as guidelines and may be varied as part of the Basic or Detailed Development Plan if it is determined that such deviation will not materially adversely affect neighboring properties or the community as a whole, any such variation of these requirements does not change the overall plan and character of the proposed development, and the variance does not have the effect of nullifying the intent and purpose of these regulations or the Zoning Ordinance. In granting variances or modifications, the Commission or Council may require such conditions as shall, in its judgement, secure substantially the objective of the standards or requirements so varied or modified.

Chapter 1179 Planned Industrial District

1177.01 Principal permitted uses.

Any principal permitted use in the Industrial Districts, I-1 and I-2, and PO Planned Office District shall be permitted. Manufacturing, processing, warehousing, industrial service activities, office and associated activities may be developed, operated and maintained within a single, organized development in accordance with an approved Planned Industrial Development District.

1177.02 Accessory uses.

Only the following accessory uses shall be permitted in this District:

- (a) Uses customarily incidental to all principal permitted uses; and
- (b) Temporary buildings and uses incidental to construction work, which buildings shall be removed upon the completion or abandonment of the construction work.

1177.03 Development standards.

Except when specifically modified herein, the provisions of Chapter 1181, "General Provisions" shall govern. In addition, the following developmental standards shall apply:

- (a) *Minimum Land Area Requirements.*
 - (1) No minimum land area shall be required.
- (b) *Site Planning, General Design Standards and Improvement Requirements.*
 - (1) Total land occupancy by all buildings for a Planned Industrial Development District shall not exceed 75 percent of the area of the tract to be developed.
 - (2) Planned Industrial Development Districts shall have access to at least one major thoroughfare as established on the Official Thoroughfare Plan.
 - (3) Landscaping and use of yards shall be as follows:
 - A. Required side and rear yards shall be maintained in landscaping and shall not be used for off-street parking along all property lines which abut residential or PM districts. The

landscaping shall include, at a minimum, a six-foot high wooden or vinyl fence structure, earth mound, or wall with an opaqueness of 100 percent.

- B. Any front, side or rear yard that fronts a public street is required to be landscaped including street trees as outlined in Chapter 1181 and additional landscaping as determined appropriate by the Planning Commission.
 - C. The project area, where it abuts another business, office, or industrial district, shall be maintained in landscaping and not used for parking, to the extent of a minimum of 15-foot depth along property lines.
- (4) Off-street parking and loading spaces shall be required as set forth in Chapter 1185. In addition:
- A. Off-street parking and loading facilities shall be provided, with area, location and design appropriate to the needs and specific uses of the industrial project. Space designated for off-street parking shall not be used for off-street loading.
 - B. Off-street parking and loading facilities shall not be located in the front yard of any property.
 - C. Off-street parking and loading shall be of sufficient size to accommodate normal peak loads.
 - D. Loading docks shall not be placed between the building and the front lot line.
- (5) There shall be a side and rear yard setback of 25 feet or equal to the heights of the principal building, whichever is greater. If adjacent to a residential district or PM District, a minimum of 75 feet.
- (6) All streets within the Planned Industrial Development District shall have a width of not less than 40 feet and shall comply with the City's construction standards.
- (7) The distribution systems for utilities are required to be underground.
- (8) Building materials. The front facade of a principal building facing any public street on any property in the PI District shall be required to be constructed of at least 30 percent masonry materials that will extend along the entire length of the facade of the principal building. For the purposes of this section, the front facade of a principal building shall include any wall of the principal building that is parallel to the public street and is located within 100 feet of the established building line. The Planning Commission shall determine the appropriateness of the proposed masonry material design. In the case of a property which has frontage on more than one public street, the facade facing the public street from which access to the property is provided shall be considered the front facade of the building. In addition to the front facade, the side or rear facades of the principal building that face Interstate 70 or a State Route shall be constructed of at least 30 percent masonry materials that shall be clearly visible to Interstate 70 or the State Route unless a sufficient landscaping buffer is provided and is determined appropriate by Planning Commission. Recommended masonry materials include brick, split face block, tilt-up concrete, dryvit or any similar material determined appropriate by the Planning Commission.
- (9) Street tree requirement. Please refer to Chapter 1181 for street tree requirements.
- (10) Trash container enclosures. Please refer to Chapter 1181 for trash container enclosure requirements.

1177.04 Conditions.

All uses shall be conducted wholly within a completely enclosed building except for parking, loading and unloading facilities, which shall all be off-street. No use shall be permitted to be established or maintained which

by reason of its nature or manner of operation is or may become hazardous, noxious or offensive owing to the emission of odor, dust, smoke, cinders, gas fumes, noise, vibration, refuse matter or water-carried waste.

1177.05 Special uses.

The following special uses and no other shall be permitted in the "P1" District.

- (a) Sexually oriented businesses in accordance with Chapter 1135. Provided no sexually oriented business shall be located within a 500-foot radius of any other sexually oriented business. No sexually oriented business shall be located within a 500-foot radius from any residential use or residential zoning district, any public park, church or church grounds, public or private school, kindergarten or nursery school. No sexually oriented business shall be located within 1,000 feet of the right-of-way of, or be on a lot with frontage upon any divided, limited access highway including but not limited to applicable portions of Interstate 70, Ohio Route 4 and Ohio Route 235. Measurement of distances shall be as provided in Section 735.04 of the City Code of Huber Heights.

Subdivision Standards Analysis:

The following is the analysis of the subdivision and zoning regulations as applied to the applicant's proposal to subdivide a five-acre parcel into two lots: Lot 1: A 1.30-acre lot zoned Agricultural; Lot 2: A 3.55-acre lot requesting to be zoned Planned Industrial.

Proposed Lot 1 Analysis:

Use: Conforming (residential uses are permitted in the Agricultural District)

Lot Size: 1.3 acres – Conforms to zoning regulations (min. 1 acre required)

Lot Frontage: 158.06 feet – Does not conform to zoning code regulations
(Zoning code requires 200 feet. (Section 1142.05))

Yards:

Front: Conforming (min 60 feet)

Side: Conforming (min 30 feet)

Rear: Conforming (min 50 feet)

Other Issues:

There is no public water or sewer currently available along this portion of Taylorsville Road. Therefore, the proposed lot does not meet 1109.17(i) of the subdivision regulations: The minimum lot size where public sewer or water is not available shall be one acre with a minimum frontage of 200 feet.

Proposed Lot 2 Analysis:

Use: Proposed use of truck / heavy equipment repair is permitted in the Planned Industrial District

Lot Size: 3.56 acres – Conforms to zoning regulations (No min. area required)

Lot Frontage: 41.43 feet – Conforms to zoning regulations (35 feet is min. required)

Yards:

Front: Conforming (min 50 feet)

Side: Conforming (min 25 feet)

Rear: Conforming (min 25 feet)

Other Issues:

There is no public water or sewer currently available along this portion of Taylorsville Road. Therefore, the proposed lot does not meet 1109.17(i) of the subdivision regulations: The minimum lot size where public sewer or water is not available shall be one acre with a minimum frontage of 200 feet.

Staff Analysis

The subdivision of the 5-acre parcel into two new lots will create one minor nonconformity, which is Lot 1, will have less frontage than required by the zoning code. The subdivision regulations do not prohibit flag lots and there are examples of rural non-conforming lots of similar type. That being said, it is poor planning practice to encourage the creation of non-conforming lots.

Staff recommends the record plan only be approved if Planning Commission recommends approval of the rezoning.

Zoning Standards Analysis:

This analysis is based on the rezoning application submitted on March 28, 2022. The zoning code assumes that rezonings to planned unit development are part of a redevelopment or new construction project. The applicant has not indicated they are proposing any improvements to the site, and has not submitted a formal basic development plan. Therefore, staff is assuming no improvements are planned for the property, and the record plan survey dated May 4, 2022 will serve as the basic development plan.

1177.01 Principal permitted uses.

Any principal permitted use in the Industrial Districts, I-1 and I-2, and PO Planned Office District shall be permitted. Manufacturing, processing, warehousing, industrial service activities, office and associated activities may be developed, operated and maintained within a single, organized development in accordance with an approved Planned Industrial Development District.

The proposed truck and heavy equipment repair is principally permitted within the Planned Industrial District.

1177.03 Development standards.

Except when specifically modified herein, the provisions of Chapter 1181, "General Provisions" shall govern. In addition, the following developmental standards shall apply:

- (a) *Minimum Land Area Requirements.*

- (1) No minimum land area shall be required.

The proposed replat and rezoning results in a Planned Industrial site of approximately 3.55 acres.

(b) *Site Planning, General Design Standards and Improvement Requirements.*

- (1) Total land occupancy by all buildings for a Planned Industrial Development District shall not exceed 75 percent of the area of the tract to be developed.

As indicated by the record plan, the occupancy for the PI district is significantly less than 75 percent of the area. Additionally, the applicant has not indicated any additional improvements are intended for the site.

- (2) Planned Industrial Development Districts shall have access to at least one major thoroughfare as established on the Official Thoroughfare Plan.

Taylorville Road is a major thoroughfare as established on the Official Thoroughfare Plan.

- (3) Landscaping and use of yards shall be as follows:

- A. Required side and rear yards shall be maintained in landscaping and shall not be used for off-street parking along all property lines which abut residential or PM districts. The landscaping shall include, at a minimum, a six-foot high wooden or vinyl fence structure, earth mound, or wall with an opacity of 100 percent.
- B. Any front, side or rear yard that fronts a public street is required to be landscaped including street trees as outlined in Chapter 1181 and additional landscaping as determined appropriate by the Planning Commission.
- C. The project area, where it abuts another business, office, or industrial district, shall be maintained in landscaping and not used for parking, to the extent of a minimum of 15-foot depth along property lines.

No additional landscaping or buffering is indicated on any plans submitted to date. However, with exception to the street tree requirement, no screening along the side yards is required.

- (4) Off-street parking and loading spaces shall be required as set forth in Chapter 1185. In addition:

- A. Off-street parking and loading facilities shall be provided, with area, location and design appropriate to the needs and specific uses of the industrial project. Space designated for off-street parking shall not be used for off-street loading.
- B. Off-street parking and loading facilities shall not be located in the front yard of any property.
- C. Off-street parking and loading shall be of sufficient size to accommodate normal peak loads.
- D. Loading docks shall not be placed between the building and the front lot line.

The applicant has not proposed any off-street parking or loading area improvements. A large gravel parking area exists in front of the existing building where repairs are currently taking place. Staff does not feel additional parking is warranted and will distract from the rural nature of the neighborhood.

- (5) There shall be a side and rear yard setback of 25 feet or equal to the heights of the principal building, whichever is greater. If adjacent to a residential district or PM District, a minimum of 75 feet.

There is approximately 25 feet between the existing barn and the east property line. The applicant has not provided building heights, therefore if the building is greater than 25 feet, the structure will be a legally non-conforming structure if the rezoning is approved.

- (6) All streets within the Planned Industrial Development District shall have a width of not less than 40 feet and shall comply with the City's construction standards.

No new streets are proposed.

- (7) The distribution systems for utilities are required to be underground.

No new utilities are proposed.

- (8) Building materials. The front facade of a principal building facing any public street on any property in the PI District shall be required to be constructed of at least 30 percent masonry materials that will extend along the entire length of the facade of the principal building. For the purposes of this section, the front facade of a principal building shall include any wall of the principal building that is parallel to the public street and is located within 100 feet of the established building line. The Planning Commission shall determine the appropriateness of the proposed masonry material design. In the case of a property which has frontage on more than one public street, the facade facing the public street from which access to the property is provided shall be considered the front facade of the building. In addition to the front facade, the side or rear facades of the principal building that face Interstate 70 or a State Route shall be constructed of at least 30 percent masonry materials that shall be clearly visible to Interstate 70 or the State Route unless a sufficient landscaping buffer is provided and is determined appropriate by Planning Commission. Recommended masonry materials include brick, split face block, tilt-up concrete, dryvit or any similar material determined appropriate by the Planning Commission.

No new buildings are proposed. If the rezoning is approved, any new buildings proposed on this lot shall be subject to this provision.

- (9) Street tree requirement. Please refer to Chapter 1181 for street tree requirements.

No landscaping plans were submitted with the application.

- (10) Trash container enclosures. Please refer to Chapter 1181 for trash container enclosure requirements.

No new trash containers are proposed.

1177.04 Conditions.

All uses shall be conducted wholly within a completely enclosed building except for parking, loading and unloading facilities, which shall all be off-street. No use shall be permitted to be established or maintained which by reason of its nature or manner of operation is or may become hazardous, noxious or offensive owing to the emission of odor, dust, smoke, cinders, gas fumes, noise, vibration, refuse matter or water-carried waste.

If the rezoning is approved, the applicant will be required to move his repair operations wholly indoors. This requirement was brought to the attention of the applicant, and he indicated he understood the requirements and wished to proceed with the rezoning request.

While the applicant has agreed to these conditions, it is important to note that the site under discussion is not readily visible from the right-of-way, in fact it is nearly 400 feet from Taylorsville Road. Therefore, any violations of this condition will be almost impossible for code enforcement staff to easily recognize and thus enforcement of this condition will likely only be triggered by complaints made by adjacent property owners or residents.

Staff Analysis of Standards for approval

The Planning Commission shall review the application, prepared development plan and the facts presented at the hearing. The applicant shall have the burden of proof. No approval shall be given unless the Commission shall find by a preponderance of the evidence that such PUD on the proposed locations:

- (a) Is consistent with official thoroughfare plan, comprehensive development plan and other applicable plans and policies;*

The applicant is seeking relief for the illegal use by requesting a rezoning to Planned Industrial after the BZA denied the use variance. The comprehensive plan indicates this area should be agricultural/low density residential. The proposed rezoning is not consistent with the comprehensive plan.

In his application, the applicant references the industrially zoned land within a ¼ to ½ mile of this site. It should be noted that the majority of that land is consistent with the comprehensive plan and has access to public water and sewer. Neither are applicable to the applicant's site.

- (b) Could be substantially completed within the period of time specified in the schedule of development submitted by the developer;*

N/A. The applicant is not proposing any improvements to the property.

- (c) Is accessible from public roads that are adequate to carry the traffic that shall be imposed upon them by the proposed development. Further, the streets and driveways on the site of the proposed development shall be adequate to serve the residents or occupants of the proposed development;*

Taylorsville Road is classified as a major thoroughfare in the City Thoroughfare Plan. The proposed record plan illustrates a dedication of 35 feet of Right of Way, consistent with the Thoroughfare Plan.

- (d) Shall not impose an undue burden on public services such as utilities, fire and police protection, and schools;*

This use has not historically imposed an undue burden on public services.

- (e) *Contains such proposed covenants, easements and other provisions relating to the proposed development standards as may reasonably be required for the public health, safety and welfare;*

N/A

- (f) *Shall be landscaped or otherwise improved and the location and arrangement of structures, parking areas, walks, lighting and appurtenant facilities shall be compatible with the existing intended uses, and any part of a PUD not used for structures, parking and loading areas, or accessways;*

No improvements to the property have been proposed by the applicant. However, the applicant has stated he is willing to provide buffering for the adjacent neighboring properties.

- (g) *Shall preserve natural features such as water courses, trees and rock outcrops, to the degree possible, so that they can enhance the overall design of the PUD;*

N/A

- (h) *Is designed to take advantage of the existing land contours in order to provide satisfactory road gradients and suitable building lots and to facilitate the provision of proposed services;*

N/A

- (i) *Shall place underground all electric and telephone facilities, street light wiring and other wiring conduits and similar facilities in any development which is primarily designed for or occupied by dwellings, unless waived by the Commission because of technical reasons;*

No improvements to the property have been proposed by the applicant.

- (j) *Shall not create excessive additional requirements at public cost of public facilities and services and shall not be detrimental to the economic welfare of the community;*

No additional public facilities are anticipated due to this rezoning request.

- (k) *Shall not involve uses, activities, processes, materials, equipment and conditions of operation that shall be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors; and*

This rezoning request ultimately arose due to complaints from neighboring property owners or residents regarding the operation of a truck / heavy equipment repair facility in their neighborhood. According to the minutes of the BZA hearing, complaints, centered on the noise of the diesel engines and traffic congestion due to vehicles moving on and off site. Additional concerns were raised about the potential contamination of drinking water wells due to fluid leaks or spills.

Noise, smoke and fumes are likely an occasional byproduct of heavy engine repair. If the planning commission is inclined to approve the rezoning, limiting the hours of operation to a traditional M-F, 8am – 6pm may reduce the impacts of this facility on the neighboring residents, especially in the evenings and weekends.

- (1) Rezoning of the land to the PUD District and approval of the development plan shall not adversely affect the public peace, health, morals, safety or welfare.

As indicated above, neighbors have expressed concerns about noise from the diesel engines and ground water pollution from this operation during the BZA hearing. All residents along this segment of Taylorsville Road get their drinking water from private wells, and this concern should not be overlooked.

STAFF RECOMMENDATION

It is the staff's opinion the rezoning to Planned Industrial does not meet the standards outlined in Section 1171.06. As outlined through the staff analysis above, the application does not meet the standards of Section 1171.06(a), (k), and (L). Therefore, staff recommends denial of the replat and rezoning from Agricultural to Planned Industrial.

If the Planning Commission determines the rezoning request is consistent with the standards outlined in Section 1171.06, staff recommends the following conditions:

- 1) The applicant shall obtain all necessary zoning and business licenses required by the City of Huber Heights;
- 2) All business and repair operations shall occur indoors, consistent with the requirements of the Planned Industrial District;
- 3) No outdoor storage of equipment, parts, inoperable or junk vehicles, or other materials associated with the truck and equipment repair business shall be permitted;
- 4) Repaired vehicles shall be stored on site no longer than five consecutive days;
- 5) The applicant shall comply with the Huber Heights Fire Department regarding the onsite storage of hazardous and/or industrial materials;
- 6) Hours of operation shall be limited to 8:00am – 6:00pm, Monday through Friday;

Planning Commission Action

Planning Commission may take the following actions with a motion:

- 1) Recommend approval of the rezoning and Basic Development Plan;
- 2) Recommend denial of the rezoning and Basic Development Plan (the Commission should state the specific reasons for denial); or
- 3) Table the application for additional information.



Planning Commission Decision Record

WHEREAS, on March 28, 2022, the applicant, Michael Skilwies, requested approval of a Replat and Rezone of 3.55 acres from Agriculture to Planned Industrial at 9416 Taylorsville Road (Case RZ 22-17), and;

WHEREAS, on May 24, 2022, the Planning Commission did meet and fully discuss the details of the request.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission hereby approved the request.

Ms. Thomas moved to approve the application by the applicant, Michael Skilwies, for approval of a Replat and Rezone of 3.55 acres from Agriculture to Planned Industrial at 9416 Taylorsville Road Parcel Number P70 03902 0018 of the Montgomery County Auditors Map (Case RZ 22-17) in accordance with the recommendation of Staff's Memorandum dated May 24, 2022, with the following conditions:

1. The applicant shall obtain all necessary zoning and business licenses required by the City of Huber Heights;
2. All business and repair operations shall occur indoors, consistent with the requirements of the Planned Industrial District;
3. No outdoor storage of equipment, parts, inoperable or junk vehicles, or other materials associated with the truck and equipment repair business shall be permitted;
4. Repaired vehicles shall be stored on site no longer than five consecutive days;

5. The applicant shall comply with the Huber Heights Fire Department regarding the onsite storage of hazardous and/or industrial materials;
6. Hours of operation shall be limited to 8:00am – 6:00pm, Monday through Friday;
7. The applicant shall pave and widen the driveway to minimum width of 35';
8. The applicant shall install screening along west property line, subject to detailed development plan approval.

Seconded by Mr. Jeffries. Roll call showed: YEAS: Ms. Vargo. NAYS: Ms. Opp, Mr. Jeffries, Ms. Thomas, and Mr. Walton. Motion to approve denied 4-1 .

Terry Walton, Chair
Planning Commission

Date

**Planning Commission
May 24, 2022, Meeting
City of Huber Heights**

- I. Chair Terry Walton called the meeting to order at approximately 6:00 p.m.
- II. Present at the meeting: Mr. Jeffries, Ms. Opp, Ms. Thomas, Ms. Vargo and Mr. Walton.

Members absent: None.

Staff Present: Aaron K. Sorrell, Interim City Planner, and Geri Hoskins, Planning & Zoning Administrative Secretary.

III. Opening Remarks by the Chairman and Commissioners

IV. Citizens Comments

None.

V. Swearing of Witnesses

Mr. Walton explained the proceedings of tonight's meeting and administered the sworn oath to all persons wishing to speak or give testimony regarding items on the agenda. All persons present responded in the affirmative.

VI. Pending Business

- 1. None

VII. New Business

- 1. **REZONING AND LOT SPLIT** - The applicant, **MICHAEL SKILWIES**, is requesting approval of a Replat and Rezoning from A (Agricultural) to PI (Planned Industrial). Property located at 9416 Taylorsville Road (Case RZ 22-17).

Mr. Sorrell stated that the applicant has been operating a truck and heavy equipment repair business at this location for many years. Based on complaints received in August 2021, Zoning staff-initiated enforcement action on the applicant's business based on the fact that non-farm related truck and heavy equipment repair is not permitted in the Agricultural District. In August 2021 the applicant requested a use variance for the diesel truck and equipment repair operations. The BZA unanimously denied the application at their October 6, 2021 meeting.

The applicant was provided with the lot split and rezoning application shortly after the BZA decision as an alternative path to allow the continued operation of the repair facility. On or about March 28, 2022 Zoning staff filed minor misdemeanor charges for the continued operation of repair facility and the applicant subsequently filed the application for a lot split and rezoning.

Applicable Subdivision and Zoning Regulations

The applicable subdivision regulations include: 1109 Subdivision Design Standards

The applicable zoning chapters include: 1171 General Provisions, 1177 Planned Industrial District.

Subdivision Standards Analysis:

The following is the analysis of the subdivision and zoning regulations as applied to the applicant's proposal to subdivide a five-acre parcel into two lots: Lot 1: A 1.30-acre lot zoned Agricultural; Lot 2: A 3.55-acre lot requesting to be zoned Planned Industrial.

Proposed Lot 1 Analysis:

Use: Conforming (residential uses are permitted in the Agricultural District)

Lot Size: 1.3 acres – Conforms to zoning regulations (min. 1 acre required)

Lot Frontage: 158.06 feet – Does not conform to zoning code regulations
(Zoning code requires 200 feet. (Section 1142.05))

Yards:

Front: Conforming (min 60 feet)

Side: Conforming (min 30 feet)

Rear: Conforming (min 50 feet)

Other Issues:

There is no public water or sewer currently available along this portion of Taylorsville Road. Therefore, the proposed lot does not meet 1109.17(i) of the subdivision regulations: The minimum lot size where public sewer or water is not available shall be one acre with a minimum frontage of 200 feet.

Proposed Lot 2 Analysis:

Use: Proposed use of truck / heavy equipment repair is permitted in the Planned Industrial District

Lot Size: 3.56 acres – Conforms to zoning regulations (No min. area required)

Lot Frontage: 41.43 feet – Conforms to zoning regulations (35 feet is min. required)

Yards:

Front: Conforming (min 50 feet)

Side: Conforming (min 25 feet)

Rear: Conforming (min 25 feet)

Other Issues:

There is no public water or sewer currently available along this portion of Taylorsville Road. Therefore, the proposed lot does not meet 1109.17(i) of the subdivision regulations: The minimum lot size where public sewer or water is not available shall be one acre with a minimum frontage of 200 feet.

Staff Analysis

The subdivision of the 5-acre parcel into two new lots will create one minor nonconformity, which is Lot 1, will have less frontage than required by the zoning code. The subdivision regulations do not prohibit flag lots and there are examples of rural non-conforming lots of similar type. That being said, it is poor planning practice to encourage the creation of non-conforming lots.

Staff recommends the record plan only be approved if Planning Commission recommends approval of the rezoning.

Zoning Standards Analysis:

This analysis is based on the rezoning application submitted on March 28, 2022. The zoning code assumes that rezonings to planned unit development are part of a redevelopment or new construction project. The applicant has not indicated they are proposing any improvements to the site, and has not submitted a formal basic development plan. Therefore, staff is assuming no improvements are planned for the property, and the record plan survey dated May 4, 2022 will serve as the basic development plan.

The proposed truck and heavy equipment repair is principally permitted within the Planned Industrial District.

As indicated by the record plan, the occupancy for the PI district is significantly less than 75 percent of the area. Additionally, the applicant has not indicated any additional improvements are intended for the site. Taylorsville Road is a major thoroughfare as established on the Official Thoroughfare Plan.

No additional landscaping or buffering is indicated on any plans submitted to date. However, with exception to the street tree requirement, no screening along the side yards is required.

The applicant has not proposed any off-street parking or loading area improvements. A large gravel parking area exists in front of the existing building where repairs are currently taking place. Staff does not feel additional parking is warranted and will distract from the rural nature of the neighborhood.

No new buildings are proposed. If the rezoning is approved, any new buildings proposed on this lot shall be subject to this provision.

If the rezoning is approved, the applicant will be required to move his repair operations wholly indoors. This requirement was brought to the attention of the applicant, and he indicated he understood the requirements and wished to proceed with the rezoning request.

While the applicant has agreed to these conditions, it is important to note that the site under discussion is not readily visible from the right-of-way, in fact it is nearly 400 feet from Taylorsville Road. Therefore, any violations of this condition will be almost impossible for code enforcement staff to easily recognize and thus enforcement of this condition will likely only be triggered by complaints made by adjacent property owners or residents

The applicant is seeking relief for the illegal use by requesting a rezoning to Planned Industrial after the BZA denied the use variance. The comprehensive plan indicates this area should be agricultural/low density residential. The proposed rezoning is not consistent with the comprehensive plan.

In his application, the applicant references the industrially zoned land within a ¼ to ½ mile of this site. It should be noted that the majority of that land is consistent with the comprehensive plan and has access to public water and sewer. Neither are applicable to the applicant's site.

This rezoning request ultimately arose due to complaints from neighboring property owners or residents regarding the operation of a truck / heavy equipment repair facility in their neighborhood. According to the minutes of the BZA hearing, complaints, centered on the noise of the diesel engines and traffic congestion due to vehicles moving on and off site. Additional concerns were raised about the potential contamination of drinking water wells due to fluid leaks or spills.

Noise, smoke and fumes are likely an occasional byproduct of heavy engine repair. If the planning commission is inclined to approve the rezoning, limiting the hours of operation to a traditional M-F, 8am – 6pm may reduce the impacts of this facility on the neighboring residents, especially in the evenings and weekends.

- (a) Rezoning of the land to the PUD District and approval of the development plan shall not adversely affect the public peace, health, morals, safety or welfare.

As indicated above, neighbors have expressed concerns about noise from the diesel engines and ground water pollution from this operation during the BZA hearing. All residents along this segment of Taylorsville Road get their drinking water from private wells, and this concern should not be overlooked.

STAFF RECOMMENDATION

It is the staff's opinion the rezoning to Planned Industrial does not meet the standards outlined in Section 1171.06. As outlined through the staff analysis above, the application does not meet the standards of Section 1171.06(a), (k), and (L). Therefore, staff recommends denial of the replat and rezoning from Agricultural to Planned Industrial.

If the Planning Commission determines the rezoning request is consistent with the standards outlined in Section 1171.06, staff recommends the following conditions:

- 1) The applicant shall obtain all necessary zoning and business licenses required by the City of Huber Heights;
- 2) All business and repair operations shall occur indoors, consistent with the requirements of the Planned Industrial District;
- 3) No outdoor storage of equipment, parts, inoperable or junk vehicles, or other materials associated with the truck and equipment repair business shall be permitted;
- 4) Repaired vehicles shall be stored on site no longer than five consecutive days;

Planning Commission Meeting

May 24, 2022

- 5) The applicant shall comply with the Huber Heights Fire Department regarding the onsite storage of hazardous and/or industrial materials;
- 6) Hours of operation shall be limited to 8:00am – 6:00pm, Monday through Friday;

Michael Skilwies and Attorney Greg Page spoke. A few neighbors spoke in opposition.

Discussion on inside storage, widen apron and driveway, current hours, Night lights, no complaints, visual truck traffic, EPA, concern about how long they've been in business, property value, safety, health, no other industrial plots, enforcement, and splitting lot what if sold.

Action

Ms. Thomas moved to approve the request by the applicant Michael Skilwies, for approval of a Rezoning from A (Agricultural) to PI (Planned Industrial) and a Lot Split. Property located at 9416 Taylorsville Road further identified as Parcel Number P70 03902 0018 of the Montgomery County Auditor's Map (Case RZ 22-17) in accordance with the recommendation of Staff's Memorandum dated May 24, 2022 and the Planning Commission Decision Record attached thereto.

Seconded by Mr. Jeffries. Roll call showed: YEAS: Ms. Vargo. NAYS: Mr. Jeffries, Ms. Opp, Ms. Thomas, and Mr. Walton. Motion to approve denied 4-1.

2. **MAJOR CHANGE TO THE DETAILED DEVELOPMENT PLAN - The applicant, SKILKEN GOLD REAL ESTATE DEVELOPMENT, LLC, is requesting approval of a Major Change to the Detailed Development Plan for a proposed Convenient Store/Gas Station and Car Wash. Property located at Old Troy Pike and Taylorsville Road (Case MJC 22-21).**

Mr. Sorrell stated applicant wasn't ready but due to already being advertised, this was added to the agenda.

Action

Mr. Jeffries moved to table the request by the applicant Skilken Gold Real Estate Development, LLC, for approval of a Major Change to the Detailed Development Plan (Case MJC 22-21) until the next Planning Commission meeting of 6/14/2022.

Seconded by Ms. Thomas. Roll call showed: YEAS: Ms. Opp, Ms. Vargo, Ms. Thomas, Mr. Jeffries, and Mr. Walton. NAYS: None. Motion to table carried 5-0.

VIII. Additional Business

CITY OF HUBER HEIGHTS
STATE OF OHIO

ORDINANCE NO. 2022-O-

TO APPROVE A REZONING FROM AGRICULTURAL (A) TO PLANNED INDUSTRIAL (PI) AND A LOT SPLIT FOR THE PROPERTY LOCATED AT 9416 TAYLORSVILLE ROAD AND FURTHER IDENTIFIED AS PARCEL NUMBER P70 03902 0018 ON THE MONTGOMERY COUNTY AUDITOR'S MAP AND TO NOT ACCEPT THE RECOMMENDATION OF THE PLANNING COMMISSION (CASE RZ 22-17).

WHEREAS, the citizens of Huber Heights require the efficient and orderly planning of land uses within the City; and

WHEREAS, the City Planning Commission has reviewed Case RZ 22-17 and on May 24, 2022, opposed approval by a vote of 4-1 of the Rezoning from Agricultural (A) to Planned Industrial (PI) and a Lot Split; and

WHEREAS, the City Council has considered the issue.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Huber Heights, Ohio that:

Section 1. The application requesting approval of a Rezoning from Agricultural (A) to Planned Industrial (PI) and a Lot Split (Case RZ 21-17) is hereby approved in opposition to the Planning Commission's recommendation of denial by a vote of 4-1 with the following conditions:

1. The applicant shall obtain all necessary zoning and business licenses required by the City of Huber Heights.
2. All business and repair operations shall occur indoors, consistent with the requirements of the Planned Industrial District.
3. No outdoor storage of equipment, parts, inoperable or junk vehicles, or other materials associated with the truck and equipment repair business shall be permitted.
4. Repaired vehicles shall be stored on site no longer than five consecutive days.
5. The applicant shall comply with the Huber Heights Fire Division regarding the onsite storage of hazardous and/or industrial materials.
6. Hours of operation shall be limited to 8:00 a.m. – 6:00 p.m., Monday through Friday.
7. The applicant shall pave and widen the driveway to minimum width of 35'.
8. The applicant shall install screening along west property line, subject to detailed development plan approval.

Section 2. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its Committees that resulted in such formal action were in meetings open to the public and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 3. This Ordinance shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the _____ day of _____, 2022;
_____ Yeas; _____ Nays.

Effective Date:

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

AI-8525

**New Business J.
City Manager**

City Council Meeting

Meeting Date: 07/11/2022

Lease for Dogtown at 6053 Brandt Pike

Submitted By: Bryan Chodkowski

Department: Economic Development

Council Committee Review?: Council Work Session
Date(s) of Committee Review: 07/05/2022

Audio-Visual Needs: None
Emergency Legislation?: No

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

A Resolution Authorizing The City Manager To Execute A Lease For 6053 Brandt Pike.
(first reading)

Purpose and Background

This legislation authorizes the City Manager to execute certain tenant leases at CR Dayton.

Fiscal Impact

Source of Funds: N/A

Cost: N/A

Recurring Cost? (Yes/No): N/A

Funds Available in Current Budget? (Yes/No): N/A

Financial Implications:

Attachments

Resolution

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2022-R-

AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE FOR 6053 BRANDT PIKE.

WHEREAS, the City of Huber Heights (“City”) is the owner of the former CR Dayton shopping center property; and

WHEREAS, the City’s realtor for this property has recommended the execution of a lease for that shopping center space identified as Unit #9 and addressed as 6053 Brandt Pike.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio that:

Section 1. The City Manager is hereby authorized and directed to execute rental agreements on behalf of the City of Huber Heights as landlord with respect to Unit #9, addressed as 6053 Brandt Pike.

Section 2. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were in meetings open to the public and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 3. This Resolution shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the _____ day of _____, 2022;
_____ Yeas; _____ Nays.

Effective Date:

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date

AI-8521

**New Business K.
City Manager**

City Council Meeting

Meeting Date: 07/11/2022

Disposal of Surplus Property - Amendment

Submitted By: Maria Beisel

Department: Police

Division: Police

Council Committee Review?: Council
Work
Session

Date(s) of Committee Review: 07/05/2022

Audio-Visual Needs: None

Emergency Legislation?: No

**Motion/Ordinance/
Resolution No.:**

Agenda Item Description or Legislation Title

A Resolution Amending Resolution No. 2022-R-7130 Regarding Certain Surplus Property.
(first reading)

Purpose and Background

Due to mechanical issues of several Police front line vehicles, it is necessary to retain 3 vehicles previously approved for disposal. One additional Police vehicle needing extensive repairs is added for disposal along with one vehicle from the Division of Taxation.

Fiscal Impact

Source of Funds: NA

Cost: NA

Recurring Cost? (Yes/No): NA

Funds Available in Current Budget? (Yes/No): NA

Financial Implications:

Attachments

Resolution

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2022-R-

AMENDING RESOLUTION NO. 2022-R-7130 REGARDING CERTAIN SURPLUS PROPERTY.

WHEREAS, on May 23, 2022, City Council passed Resolution No. 2022-R-7130 declaring certain vehicles as surplus property and authorizing the disposal of same; and

WHEREAS, since May 23, 2022, two additional vehicles not listed in Resolution No. 2022-R-7130 have since been deemed to be no longer required for municipal purposes; and

WHEREAS, since May 23, 2022, due to mechanical issues with other vehicles, three of the vehicles listed as surplus in Resolution No. 2022-R-7130 have been found to be needed for municipal purposes.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Huber Heights, Ohio that:

Section 1. Consistent with the provisions of the Ohio Revised Code Section 721.15 and applicable City Codified Ordinances and purchasing procedures, the following additional vehicles are declared surplus, no longer required for municipal purposes:

<u>VIN Number</u>	<u>Make</u>	<u>Model</u>	<u>Year</u>	<u>Inventory Tag Number</u>
1FM5K8AR1GGC50517	Ford	Interceptor	2016	PO1752
1G1ND52J53M677967	Chevrolet	Malibu	2003	FN00140

Section 2. Authorization is hereby provided to the City Manager to dispose of the above listed item on an online auction site or in such other manner as authorized by law.

Section 3. The following three vehicles that were previously listed as surplus property in Resolution No. 2022-R-7031 are hereby removed from such list and shall remain as assets of the City.

<u>VIN Number</u>	<u>Make</u>	<u>Model</u>	<u>Year</u>	<u>Inventory Tag Number</u>
1FM5K8AR1GGA02073	Ford	Interceptor	2016	PO1643
1FM5K8AR5GGC50519	Ford	Interceptor	2016	PO1748
1FM5K8AR3GGC50518	Ford	Interceptor	2016	PO1750

Section 4. All other items listed in Resolution No. 2022-R-7031 as surplus property and authorized to be disposed of on an online auction site or in such other manner as authorized by law remain the same and are unaffected by this amendment.

Section 5. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were in meetings open to the public and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 6. This Resolution shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the ____ day of _____ 2022;
____ Yeas; ____ Nays.

Effective Date:

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date