

# RECORD OF PROCEEDINGS

Minutes of

Huber Heights City Council

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

In Council Chambers

Held

6131 Taylorsville Road

October 11, 20 2021

## **1. Call The Meeting To Order - Mayor Jeff Gore**

The Huber Heights City Council met in a Regular Session on October 11, 2021. Mayor Jeff Gore called the meeting to order at 7:00 p.m.

Mayor Gore asked for a moment of silence for Ohio State Trooper Brian Aller, a resident of Huber Heights.

## **2. Invocation - Pastor Randy Griffith Of The Free Methodist 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, Ed Lyons, Andy Hill, Don Webb, Mayor Jeff Gore

## **5. Approval Of Minutes**

A. City Council Meeting Minutes - September 27, 2021

## **6. Special Presentations/Announcements**

A. Indigenous Peoples' Day Proclamation Presentation To The Huber Heights Culture And Diversity Citizen Action Commission - Mayor Jeff Gore

Mayor Gore read the proclamation and presented the proclamation to the attending members of the Culture and Diversity Citizen Action Commission.

Mrs. Mia Honaker said this proclamation is a project that has meant a lot to her and she thanked Mayor Gore for making this a day in history for the indigenous folks in the City and the Huber Heights community.

## **7. Citizens Comments**

Mayor Gore said before getting to the Citizens Comments, he wanted to clarify something. He said there has been lots of discussion regarding Section 4.9 of the DEC Development Agreement. He said Section 4.9 talks about the City requesting annexation. He said that has never happened and he confirmed with Mr. Falkowski that no member of City Council or City Staff has requested annexation. He asked Gerald McDonald if Council needs to wait for Miami County to make a decision on the annexation petition before this Council could pass legislation to put an end to this annexation.

Mr. McDonald said there will be a window under the annexation laws where the City votes to accept or reject the annexation, but he is not sure beforehand what exactly the City can do. He said he could have that information in a couple of days.

Mayor Gore said as soon as Mr. McDonald has that information, he would like to schedule a Special City Council Meeting to put that legislation before Council for a vote and to end the annexation talk altogether. He asked Mr. McDonald to find that information.

Ms. Michelle Swank said the annexation concerns her as a Bethel Township citizen as it is its own entity. She said if annexation were to proceed, residents would have a loss of small community and more traffic congestion; and she is really concerned about the

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congestion Huber Heights has on State Route 202 between I-70 and Taylorsville Road and she has concerns about that pushing forward.

Mayor Gore said there is a plan to fix the traffic issues in that area.

Ms. Swank said the number of homes puts a large number of cars on State Route 40 and the back roads. She said the school system is not able to meet the current demand and there is already a high student to teacher ratio. She asked Council to not pursue annexation of this property.

Mr. William Thayer, III said he is opposed to the annexation. He said Bethel Township is building a new school and due to the price of inflation, it will only serve grades K through 4 instead of K through 5. He said his property abuts the property that would be annexed and if he decides to raise hogs, the residents will be calling about the smell. He said the residents are already doing that with the Bowman-Landes Farm. He said he moved to a rural area and he does not want to be staring at back doors and have children trespassing in his woods. He said this will be a bad situation and his neighbor will be in the same boat.

Ms. Beth Van Haaren said, at the September 27, 2021 City Council Meeting, Mayor Gore asked the Councilmembers if they knew about this annexation ahead of time. She said some Councilmembers said nothing and some shook their heads. She said she reviewed the meeting minutes and on September 7, 2021, the first pre-annexation agreement was passed to deal with this annexation, and then on September 13, 2021, Council was ready to go with the services agreement. She said evidently there are differences of opinion of what is ahead of time. She said Bethel Township and the Miami County Commissioners were served with a petition on September 13, 2021. She said the Bethel Township Trustees had no knowledge of the petition, but they did have knowledge the annexation was going to eventually occur. She said she shared the email with Council the last time regarding last July's conversation with Matt Lindsay from the Miami Valley Regional Planning Commission, the representative from Tri-Cities, Ken Conaway, and then City Manager Rob Schommer, so some City Staff were definitely aware of the potential for annexation. She read a portion of the September 7, 2021 meeting minutes regarding City Council requesting the Clerk of Council attempt to schedule a joint meeting with City Council, the Bethel School Board, Bethel Township, and Miami County to discuss the proposed annexation in the near future. She said it has been five weeks and still no meeting date has been set. She said Mr. Rodgers sent an email on September 15, 2021 asking the parties to schedule a meeting; and then on September 27, 2021 the invitation was rescinded. She said let's meet, let's talk. She said this development will add 600 to 900 units which adds 0.5 to 0.6 kids per unit to the schools. She said Bethel Schools are the selling point to Carriage Trails, Parktowne, and Bethel Township. She said she called Mr. Primm from the Montgomery County Mediation Center, and he will meet with everyone to mediate these issues.

Mayor Gore asked if Council passes legislation to put an end to the annexation, is there still a reason to meet for mediation?

Ms. Van Haaren said the parties would still like to meet with Council because they would like a moratorium on all future annexations. She said Huber Heights can go east, west, and south, just do not come north.

Mr. Kerry Pahal said he opposes the annexation. He said ten years ago, he chose where he lives because he wants to live out in the country. He said he wants to keep Bethel Township the way it is.

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Ms. Michele Coppock said she has a corner of the property adjacent to her neighbors who said they like their piece of heaven on earth and would like to not have the smell of what everyone is having for dinner. She said it is also difficult with the amount of traffic that exists now.

Mayor Gore asked Mr. McDonald to give the information he gathers to Anthony Rodgers and himself, and he will schedule a City Council Meeting to discuss the information.

Mr. Shaw said with the information provided tonight and without any prior knowledge, he would make a motion to ask Council to amend the agenda to add an Item 11-C to rescind the services agreement legislation passed on September 13, 2021 in accordance with ORC 709.023 by a vote of 6-2 with the recommendation that the letter go directly to Miami County Commissioners.

Mayor Gore asked Mr. McDonald if there are any legalities since this is not the meeting directly after that action happened?

Mr. McDonald said Mr. Shaw is not asking for a motion to reconsider, this is a motion to rescind an ordinance.

Mr. Rodgers said there is a motion to amend the agenda and the motion requires a second before discussion on the motion.

Mr. Otto seconded the motion.

Mr. McDonald said Council has the ability to repeal a resolution generally speaking. He said he does not know the ins and outs, and he does not know if repealing this resolution would have any legal effect with respect to what Miami County is doing. He said the City had a certain timeframe to get the legislation to Miami County for consideration. He said there are more questions than answers. He said he thinks Council can, but he is not sure.

Mayor Gore asked if it would be safe to say when Mr. McDonald finds that information on what impact it has and when the City Council Meeting is scheduled to pass legislation to end the annexation, that if the legislation needs to be rescinded, it can happen at that meeting.

Mr. McDonald said he does not know for a fact, but it may very well be that way.

Mrs. Byrge said she has no problem rescinding the resolution at the proper time, but she would like Mr. McDonald to come back with his answers before taking any action.

Mayor Gore said Mr. Rodgers said Council would need a resolution rescinding the statement of services legislation if that course is pursued.

Ms. Van Haaren read the portion of the Ohio Revised Code – Township Or Municipality Consents Or Objects. She said Huber Heights has already filed a pre-annexation agreement and petition of services, and she presented the paperwork from the City's website to Mr. McDonald.

Mayor Gore said Scott Falkowski provided that copy of an agreement as part of the background information for the Council Work Session meeting packet.

Mr. McDonald said the City had 25 days to file to object to that petition, but that 25 days has passed.

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Mr. Shaw said Miami County Commissioners are set to meet on October 25, 2021. He said essentially there is no action that the City can take.

Mr. McDonald said assuming Miami County passes it, it then comes back to the City and then the City can accept or reject the annexation. He said if the City does nothing for 120 days, it is deemed rejected, but in this case, the City could definitely do something to formally reject the annexation. He discussed some case law with Type II annexations. He said it all comes down to the City's real authority on this issue is under Section 709.04 when it comes to the City for the final action to accept or reject the annexation.

Mayor Gore asked if the City does not have to wait for Miami County and can pass legislation ending the annexation process, is there even a need to rescind the statement of services legislation.

Mr. McDonald said if the City does not want this annexation, the City should do everything it can in case something is missed. He said he will know soon the best course of action.

Mr. Campbell asked Mr. McDonald in light of the Mayor asking Council to attend a meeting after Mr. McDonald has completed his research, what does he recommend tonight's vote on the motion be?

Mr. McDonald said he is not sure of the legal effect, so he does not know why Council would pass something tonight that could muddy the water when Council can get it right the first time. He said he would have more information on Thursday or Friday.

Ms. Swank said she appreciates the City looking into this matter and trying to be good neighbors.

Mayor Gore said he wants to make it clear that the City did not request the annexation. He said the developer appears to have done that backwards from what the development agreement states.

Mr. Shaw said he would still like a vote on the motion.

Mayor Gore said the vote would be to amend the agenda to discuss rescinding that piece of legislation this evening. He said a no vote would be to not amend the agenda and wait for Mr. McDonald to come back with his legal opinion on how to move forward.

On a call of the vote, Mr. Otto, Mr. Lyons, and Mr. Shaw voted yea; Ms. Baker, Mr. Campbell, Mrs. Byrge, Mr. Hill, and Mr. Webb voted nay. The motion fails 5-3.

Mayor Gore said he will wait for Mr. McDonald to get that information back to him, and he will schedule a Special City Council Meeting prior to the next regularly scheduled City Council Meeting as needed.

Mr. Otto said regardless of how this plays out, he would be more than happy to take a meeting with the Bethel Township Board of Trustees.

Ms. Cindy Schwartz said she is in Ward 2, and she does not believe residents were asked to give input regarding the services agreement. She said traffic studies were done a while ago and the City was supposed to talk to the Ohio Department of Transportation (ODOT) regarding changes to the entrance to Carriage Trails Boulevard at Brandt Pike. She said she has not heard anything and asked if there is current information as to how that entrance will change.

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Mr. Falkowski said the street lights and signage have been upgraded at that intersection. He said he will get an update on the traffic signal portion and updates on what steps are still out there before the next meeting.

Mr. Webb said the last update he received from the former City Manager was that ODOT had to come to an agreement on a traffic signal and what improvements would be made to that area. He said Mr. Schommer had also talked about turn lanes. He said it has been on his list and it is something that Council is not going to let go.

Ms. Schwartz said from watching the Council Work Sessions and City Council Meetings between the September 7-13, 2021, it was said sooner rather than later regarding the proposed joint meeting, and it has been close to or over a month. She asked if that meeting is still in the process of being arranged.

Mayor Gore said just because the Ohio Revised Code says Miami County should vote yes and to assume Miami County is going to vote yes is a far stretch in his opinion. He said he did not feel it was appropriate for this Council to be involved in any kind of meeting where Council may have some type of influence one way or another over what Miami County may or may not do. He said once Miami County makes a decision, then Council and Bethel Township can have whatever meetings are wanted. He said that is why he paused the discussion of the meetings. He said it sounds like it does not matter now as long as Mr. McDonald gets that information back to Council to stop the annexation process. He said if Miami County votes no, then none of this conversation ever needed to happen.

Ms. Schwartz disagreed and said it is always important that residents get to voice their opinions.

Mr. Don Black, a Bethel Township Trustee, said he has lived on Singer Road for 65 years. He asked about the traffic light at State Route 201 and Carriage Trails Boulevard and asked if he understood correctly that Council does not know what is going to happen there.

Mayor Gore said Council's desire is to have a traffic light, but there are four entities involved. He said Council has passed legislation to allow whatever is necessary to install the traffic light.

Mr. Black said if there is not an approval, why is dirt being moved and why is a pond being filled in.

Mr. Falkowski said the developer/property owner, is doing that work. He said that pond is not a retention pond and no pipes are going into that area. He said that is a place where the developer is leveling it off to create a landscaped area.

Mr. Black said to dig it and then fill it in, it seems like there is something hidden there.

Mr. Falkowski said he believes it was to be a water feature at one point in time and with the rock, it was not feasible. He said it was just there for aesthetics.

Mr. Otto said he believes if two entities are in agreement on a common goal it is absolutely appropriate to work together to achieve the common goal. He said if the parties could get together to discuss with the other entities involved, he does not believe these things should be kept separate.

Mrs. Byrge asked if the traffic study has been completed. She asked when the resolution for that intersection is established will that plan need to go through the Miami Valley Regional Planning Commission (MVRPC) for funding.

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Mr. Falkowski said he needs to check on the traffic study with the City Engineer. He said the project would not have to go through MVRPC, but there might be potential for some funding. He said it could be something the City could just pay for or there could be a sharing of funds between the communities.

Mr. Shaw said it was stated that after Council met on September 13, 2021, Council gave direction to the Clerk of Council to attempt to schedule a joint meeting with Bethel Township. He said from the information provided today, the invitation was rescinded on September 27, 2021. He said he did not give the Clerk of Council authorization to rescind that meeting, and he did not see any email communication from Mr. McDonald stating any type of legal concern. He asked Mayor Gore if he is stating that he gave that direction on his own to rescind that meeting.

Mayor Gore said when Mr. Rodgers was trying to get everyone's schedules together, he told Mr. Rodgers he was not comfortable meeting before Miami County made a decision because he did not believe Council should be involved in influencing the decision of another governmental agency.

Mr. Shaw asked if Mayor Gore did not believe that information should have been shared with all of Council at that time because Council gave that direction. He said he did not receive that communication.

Mayor Gore said he had discussed that information with Mr. Rodgers.

## **8. Citizens Registered to Speak on Agenda Items**

There were no Citizens Registered To Speak On Agenda Items this evening.

## **9. City Manager Report**

Interim City Manager Scott Falkowski said the Huber Heights Veterans Memorial is going well and still on schedule. He said the majority of the concrete work is complete and the granite monuments are set to arrive this week and will be in place by next week. He said there will be a dedication ceremony and a Veterans Day event at that location. He said the parking lot will be repaved as well. He said at Monita Field Park, the pump track is under construction. He said work on the BMX track will begin next week, and the skate park ramps are scheduled to arrive next week also. He said all of this work should be completed by the end of October. He said this weekend on Saturday is the Bites in the Heights, a car show, and a movie night at the Rose Music Center with free admission. He said the food trucks are on site from 11:00 a.m. to 6:30 p.m., the car show is from 2:00 p.m. to 6:30 p.m., and at 6:30 p.m. inside the facility is the movie, Casper.

## **10. Pending Business**

There is no Pending Business this evening.

## **11. New Business**

### **CITY COUNCIL**

#### **Anthony Rodgers, Clerk of Council**

A. An Ordinance Amending Certain Sections Of Part Three, Traffic Code, Of The City Code Of Huber Heights.  
(first reading)

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Mr. Rodgers said these are recommendations for amendments to the City Code in Part Three - Traffic Code from the Ordinance Review Commission that has been meeting over the past year. He said these recommendations were reviewed in detail at the Council Work Session.

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

Mr. Campbell moved to waive the second reading; Mr. Hill seconded the motion. On a call of the vote, Mr. Campbell, Mrs. Byrge, Mr. Otto, Mr. Lyons, Mr. Hill, Mr. Webb, Mr. Shaw, and Ms. Baker voted yea; none voted nay. The motion passes 8-0.

Mrs. Byrge moved to adopt; Mr. Webb seconded the motion. On a call of the vote, Mrs. Byrge, Mr. Otto, Mr. Lyons, Mr. Hill, Mr. Webb, Mr. Shaw, Ms. Baker, and Mr. Campbell voted yea; none voted nay. The motion passes 8-0.

B. An Ordinance Amending Certain Sections Of Part Seven, Business Regulation Code, Of The City Code Of Huber Heights.  
(first reading)

Mr. Rodgers said this item is basically the same as the previous one, but for Part Seven - Business Regulation of the City Code. He said at future meetings through the remainder of the year, he will be coming back with recommended changes to the other sections of the City Code for approval based on the recommendations of the Ordinance Review Commission. He asked that Council waive the second reading and pass this item this evening.

Ms. Baker moved to waive the second reading; Mrs. Byrge seconded the motion. On a call of the vote, Mr. Otto, Mr. Lyons, Mr. Hill, Mr. Webb, Mr. Shaw, Ms. Baker, Mr. Campbell, and Mrs. Byrge voted yea; none voted nay. The motion passes 8-0.

Mr. Otto moved to adopt; Mr. Hill seconded the motion. On a call of the vote, Mr. Lyons, Mr. Hill, Mr. Webb, Mr. Shaw, Ms. Baker, Campbell, Mrs. Byrge, and Mr. Otto voted yea; none voted nay. The motion passes 8-0.

## 12. City Official Reports and Comments

Mr. Shaw said he is hoping at the next Council Work Session there will be a resolution to approve the softball field lease agreement as well as address the traffic safety concerns that have been raised. He thanked the Bethel Township residents for coming out and making their voices heard. He said this past weekend, he volunteered with the Huber Heights Athletic Foundation (HHAF). He said the HHAF needs volunteers, and he asked residents to reach out to help with Wayne Bingo which is in its thirtieth year. He said Big Sandy is moving forward and finally has glass in the building. He congratulated Wayne High School on its victory over Fairmont High School. He thanked the volunteers who put on the barn dance event this weekend. He said the Huber Heights City Schools put on the Homecoming Parade in the last few weeks. He said he did not receive an official invite for the parade, and through some review with the Clerk of Council, the City Manager, and the Superintendent, it appears he was intentionally not invited. He said he received a phone call from the Superintendent who apologized greatly for that issue and assured him it was not his personal intention and came from a breakdown of communication. He said the Superintendent agreed with him that there were some unfortunate situations that occurred. He said he finds it very unfortunate as he has personally supported that government board every year for the Homecoming Parade, and it appears that other members of Council did receive that invite.

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Mr. Webb said he did not get an invite to the Homecoming Parade, but he saw it on Facebook and he showed up like he does every year. He said he does not think it was a deliberate slight against Mr. Shaw. He said regarding the traffic light issue, on January 11, 2021, this Council passed Resolution No. 2021-R-6958, and he read the resolution title. He said there has been a change in leadership with the City Manager, so this matter may have been pushed aside a bit, but he promised Council will stay on this item. He said October is Breast Cancer Awareness Month and this month is personal for him. He said he spent a lot of years working with fundraising for breast cancer organizations throughout the Miami Valley and nationwide. He said he and his wife have been very involved for over 20 years. He said it never really hits you quite as hard as when it hits you in your own home, as his wife was diagnosed with breast cancer. He said 1 out of 8 women suffer from breast cancer. He asked everyone to keep that awareness in their hearts this month.

Mr. Otto gave a shout out to Cindy Davidson and her nonprofit organization for the barn dance. He said he hopes to continue doing things like that within the community. He said he was at the Homecoming Parade and was only there because Mr. Shaw called him as Mr. Shaw was driving by taking his son to a football game. He said he did not receive an invitation, and normally Anthony Rodgers sets that up and gets the information out to Council. He said he got over there real quick and there was an entry under Huber Heights City Council. He said the Mayor and a few Councilmembers were there along with a commission member. He said he also received zero indication this parade was going to happen. He said he does not know how the communication broke down. He said in discussions he has had with others, he understands the Mayor was given the task of notifying the City of the event. He said it is unfortunate and he hopes these things do not continue. He said he thought about filing a complaint, but those things never go anywhere. He said it did seem intentional.

Mayor Gore said he worked at the school and there was no formal invitation sent to anyone at the City. He said he saw an email about the parade and specifically asked the organizer to communicate with Council to determine if they were going to be available. He said everyone knows the Homecoming Parade is the Wednesday before the Homecoming football game. He said the Superintendent said Mr. Shaw called complaining, and the Superintendent did not call him to apologize, and he reiterated Mr. Shaw's earlier statement that the Superintendent called him. He said when he told the organizer he was interested, she made a City Council entry for the parade. He asked if Council can move on from the pettiness.

13. Executive Session

There was no need for an Executive Session this evening.

14. Adjournment

Mayor Gore adjourned the Regular Session City Council Meeting at 8:14 p.m.

Anthony C. Rodgers
Clerk of Council

11-9-21

Date

Mayor Gore
Mayor

11-10-21

Date