

Notice of Meeting

CITY COUNCIL WORK SESSION

Tuesday, July 5, 2022

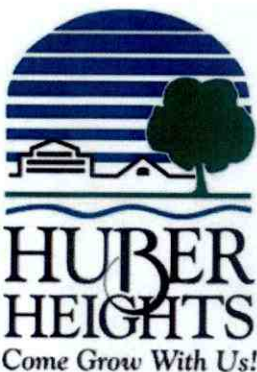
*at or about 6:00 p.m. at City Hall –
Council Chambers – 6131 Taylorsville Road*

Huber Heights Mayor Jeff Gore has scheduled a City Council Work Session to discuss:

- City Manager Report/Water Infrastructure Update
- Disposal Of Surplus Property – Amendment
- East Water Main Extension Project – Award Contract
- Water Distribution Vouchers
- Case RZ 22-17 – Michael Skilwies – Rezoning/Replat – 9416 Taylorsville Road
- Falls Creek Park – Name Change
- Carriage Trails – Special Assessments – Sections 2-5/7-5
- Retire/Rehire – Anthony Rodgers
- Culture and Diversity Needs Assessment
- Citizens Review Board
- Rules Of Council – Amendment – Council Absences

Please Note:

The meeting will be viewable by the public on live stream available at www.hhoh.org



Distributed – July 1, 2022

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**HUBER
HEIGHTS**
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**CITY OF HUBER HEIGHTS
STATE OF OHIO**

City Council Work Session

July 5, 2022

6:00 P.M.

City Hall – Council Chambers – 6131 Taylorsville Road

1. **Call Meeting To Order/Roll Call**

2. **Approval of Minutes**

A. June 21, 2022

3. **Work Session Topics Of Discussion**

A. City Manager Report/Water Infrastructure Update

B. Disposal of Surplus Property - Amendment

C. East Water Main Extension Project - Award Contract

D. Water Distribution Vouchers

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

F. Falls Creek Park - Name Change

G. Carriage Trails – Special Assessments – Sections 2-5/7-5

- * Resolution Of Necessity

- * Ordinance To Proceed

H. Retire/Rehire - Anthony Rodgers

I. Culture and Diversity Needs Assessment

J. Citizens Review Board

K. Rules Of Council - Amendment - Council Absences

4. **Adjournment**

**CITY OF HUBER HEIGHTS
STATE OF OHIO**

Council Work Session Meeting Minutes

Name of Body: Council Work Session

Date: July 5, 2022

Time: 6:00 P.M.

Place: City Hall – 6131 Taylorsville Road – Council Chambers

Members Present:

Kathleen Baker, Councilmember
Nancy Byrge, Councilmember
Mark Campbell, Councilmember
Anita Kitchen, Councilmember
Ed Lyons, Councilmember
Glenn Otto, Councilmember
Richard Shaw, Councilmember
Don Webb, Councilmember
Jeff Gore, Mayor

Guests Present:

City Staff Present: Bryan Chodkowski, Josh King, Russ Bergman, Mark Lightner, and Anthony Rodgers.

Topics of Discussion:

- City Manager Report/Water Infrastructure Update
- Disposal Of Surplus Property - Amendment
- East Water Main Extension Project – Award Contract
- Water Distribution Vouchers

- Case RZ 22-17 – Michael Skilwies – Rezoning/Replat – 9416 Taylorsville Road
- Falls Creek Park – Name Change
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- Retire/Rehire – Anthony Rodgers
- Culture and Diversity Needs Assessment
- Citizens Review Board
- Rules Of Council – Amendment – Council Absences

1. **Call Meeting To Order/Roll Call**

Mayor Jeff Gore convened the Council Work Session at 6:00 P.M.

Anthony Rodgers took Roll Call.

2. **Approval of Minutes**

The following minutes were approved unanimously at the beginning of this meeting:

- June 21, 2022

There were no changes or corrections to these minutes as submitted.

This Council Work Session was recorded by the City and the recording of this meeting will be posted to the City's website and will also be maintained by the City consistent with the City's records retention schedule.

3. **Work Session Topics Of Discussion**

Mayor Jeff Gore noted that the Huber Heights Fire Division has received and ISO rating of 2 which is in the top 5% of all fire departments in the nation. He reviewed the factors that impact the ISO rating, and he said

this ISO rating is a very important thing for the Fire Division and the City.

Police Chief Mark Lightner provided the City Council with an overview on the decrease of Type I serious crimes in Huber Heights.

City Manager Report/Water Infrastructure Update

Bryan Chodkowski thanked the Arts and Beautification Commission, City Staff, and all of the others involved in putting on the Star Spangled Heights celebration. He also thanked the Huber Heights Chamber of Commerce for judging the entries in the Star Spangled Heights parade and DayMet Credit Union for providing the parade awards. He said the Comprehensive Development Plan Steering Committee will be facilitating several social media surveys and pop-up events to gather input for the City's Comprehensive Development Plan. He said the Huber Heights Farmers Market has resumed every Saturday since the other festivals have passed.

Disposal Of Surplus Property – Amendment

Bryan Chodkowski distributed information and proposed legislation to amend Resolution No. 2022-R-7130 regarding certain City surplus property (see attached). He said due to mechanical issues with several of the Police Division's front line vehicles, it is necessary to retain three vehicles previously approved for disposal. He said one additional Police Division vehicle needing extensive repairs has also been added for disposal, along with one vehicle from the Tax Division.

After discussion, the City Council agreed to recommend approval of the proposed legislation to amend Resolution No. 2022-R-7130 regarding certain City surplus property and requested that the proposed legislation be placed on the agenda at the July 11, 2022 City Council Meeting for a first reading as non-emergency legislation with adoption of the legislation at the July 11, 2022 City Council Meeting.

East Water Main Extension Project – Award Contract

Russ Bergman distributed information and proposed legislation to authorize the award of a contract for the East Water Main Extension

Project (see attached). He said this legislation will authorize a contract with C. G. Construction and Utilities, Inc. as the lowest and best bidder for the East Water Main Extension Project. He said federal grant dollars as part of the American Rescue Plan Act (ARPA) will be utilized to construct this project at a cost not to exceed \$3,000,000 that will be appropriated in the Water Utility Reserve Fund. He said the proposed improvement of the East Water Main Extension Project includes the installation of approximately 7,890 linear feet of 16" water main, complete with appurtenances, along Bellefontaine Road from 7060 Bellefontaine Road to a connection point at the intersection of Bellefontaine Road and Center Point 70 Boulevard.

Anita Kitchen said that she was not in favor of spending funds for the East Water Main Extension Project when there were so many issues with the City's existing water infrastructure. She said she favored using the available funds for repairs and replacement of existing water infrastructure.

There was a lengthy discussion regarding the East Water Main Extension Project, the City's water infrastructure, and the availability of funds in the Water Fund.

Richard Shaw advocated for seeking funds from the State of Ohio and the federal government for the City's water infrastructure through letters to state and federal elected officials.

After discussion, the City Council agreed to recommend that action be postponed on the proposed legislation to authorize the award of a contract for the East Water Main Extension Project and agreed to discuss this agenda item again at the next Council Work Session.

Water Distribution Vouchers

Anita Kitchen distributed information regarding the implementation of a water distribution voucher program for residents affected by water main breaks (see attached). She said this program was discussed previously but there have been no updates from City Staff.

Bryan Chodkowski said there had been some issues with City Staff identifying vendors that would accept the bottled water vouchers and he

said he thought bottled water was available to residents through the St. Peter's Church food pantry.

After discussion, the City Council agreed to recommend that this agenda item be discussed again at an upcoming Council Work Session after City Staff had the opportunity to explore the water distribution voucher program more thoroughly.

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

Bryan Chodkowski distributed information and proposed legislation to approve a rezoning from Agricultural (A) to Planned Industrial (PI) and a lot split for the property located at 9416 Taylorsville Road and to not accept the recommendation of the Planning Commission in Case RZ 22-17 (see attached). He gave a PowerPoint presentation on Case RZ 22-17 (see attached).

After discussion, the City Council agreed to place the proposed legislation to approve a rezoning from Agricultural (A) to Planned Industrial (PI) and a lot split for the property located at 9416 Taylorsville Road and to not accept the recommendation of the Planning Commission in Case RZ 22-17 on the agenda at the July 11, 2022 City Council Meeting for a first reading as non-emergency legislation with the second reading and consideration of adoption of the legislation at the July 25, 2022 City Council Meeting pending the public hearing on Case RZ 22-17 at the July 11, 2022 City Council Meeting.

Falls Creek Park – Name Change

Josh King distributed information regarding a proposed name change for Falls Creek Park (see attached). He said in October, 2021, the Parks and Recreation Board voted to rename Falls Creek Park in honor of Dennis Philipps. He said five board members were present and voted 5-0 in favor of the renaming. In May, 2022, he said the Parks and Recreation Board discussed the process again and then discussed just putting up a plaque on the large boulder in the park in honor of Dennis Philipps. He said City Staff is seeking direction on the proposed name change from the City Council.

After discussion, the City Council agreed to recommend that this agenda item be discussed again at an upcoming Council Work Session after City Staff had the opportunity to prepare a formal recommendation from City Staff regarding the renaming of Falls Creek Park.

Carriage Trails – Special Assessments – Sections 2-5/7-5

Bryan Chodkowski distributed updated information and revised proposed legislation to adopt a Resolution Of Necessity for special assessments for Sections 2-5 and 7-5 of the Carriage Trails Subdivision (see attached). He said there was some confusion as to the information previously provided in the meeting packet. He said 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. He said 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. He said 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, he said the City will reimburse DEC annually for the amount collected less the City and County administrative fees. In order to accomplish this, he said the City will need to pass a Resolution Of Necessity and an Ordinance To Proceed with the improvement and this item is the Resolution Of Necessity.

After discussion, the City Council agreed to recommend approval of the revised proposed legislation to adopt a Resolution Of Necessity for special assessments for Sections 2-5 and 7-5 of the Carriage Trails Subdivision and requested that the revised proposed legislation be placed on the agenda at the July 11, 2022 City Council Meeting for the second reading as non-emergency legislation with the amendment and adoption of the legislation at the July 11, 2022 City Council Meeting.

Bryan Chodkowski distributed updated information and revised proposed legislation to adopt an Ordinance To Proceed for special assessments for Sections 2-5 and 7-5 of the Carriage Trails Subdivision (see attached). He said 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. He said 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. He said 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, he said the City will reimburse DEC annually for the amount collected less the City and County administrative fees. In order to accomplish this, he said the City will need to pass a Resolution Of Necessity and an Ordinance To Proceed with the and this item is the Ordinance To Proceed.

After discussion, the City Council agreed to recommend approval of the revised proposed legislation to adopt an Ordinance To Proceed for special assessments for Sections 2-5 and 7-5 of the Carriage Trails Subdivision and requested that the revised proposed legislation be placed on the agenda at the July 11, 2022 City Council Meeting for the second reading as non-emergency legislation with the amendment and adoption of the legislation at the July 11, 2022 City Council Meeting.

Retire/Rehire – Anthony Rodgers

Mayor Jeff Gore distributed information and proposed legislation to accept the resignation of Anthony Rodgers as Clerk of Council and to appoint Anthony Rodgers as Clerk of Council (see attached).

Gerald McDonald explained the process for the retirement and rehire of Anthony Rodgers as Clerk of Council.

In response to a question, Anthony Rodgers said he would be rehired as Clerk of Council at a salary 14% less than his current salary.

After discussion, the City Council agreed to recommend approval of the proposed legislation to accept the resignation of Anthony Rodgers as Clerk of Council and to appoint Anthony Rodgers as Clerk of Council and requested that the proposed legislation be placed on the agenda at the July 11, 2022 City Council Meeting for a first reading as non-emergency legislation with adoption of the legislation at the July 11, 2022 City Council Meeting.

Culture and Diversity Needs Assessment

Mayor Jeff Gore distributed information regarding a culture and diversity needs assessment (see attached). He said back before the City had the resolution regarding racism being a public health crisis, there was a discussion with the Culture and Diversity Citizen Action Commission regarding a needs assessment. He said this item dates back to when Rob Schommer was City Manager. He said there was an issue regarding who had the qualifications to write the Request For Qualifications (RFQ) around April, 2021.

Mark Campbell said two weeks ago, he spoke with the Chair and the Vice Chair of the Culture and Diversity Citizen Action Commission. He said he went into the conversation remembering that some 15 months ago, the needs assessment was turned back over to the commission and that the commission was working on that RFQ. He said he did not realize it had been that long. He said in speaking to the Chair and the Vice Chair, they indicated the RFQ was completed and on Bryan Chodkowski's desk. He said the Chair had indicated after he made the request to have this item on the agenda to hold off on all of the discussion until she was back from vacation this month. He said since it is on the agenda anyway, maybe Mr. Chodkowski could speak to this matter.

Bryan Chodkowski said in going over his notes and emails, he cannot find any information where the commission has provided direction on advancing this item. He said he can demonstrate based on the minutes and emails that back on April 1, 2022, he briefed the commission on the RFQ. He said he and Mrs. Stephens had gone back and forth about the content. He said there was discussion at the commission level as well. He said there was still information that needed to be inputted from the commission. He said the following day, he sent the Chair a copy of the Word version of that document so it could be edited, and the commission received the PDF version that same day. He said he did not have any other input or information from Mrs. Stephens or the commission until the matter came up on November 4, 2021, in a commission meeting. He said on November 5, 2021, he received an email from Mrs. Stephens who asked to meet to review that item. He said he emailed Mrs. Stephens to say he was out of the office on vacation and that she could speak with Katie Knisley. He said Mrs. Stephens acknowledged she would reach out to Katie Knisley and follow up. He said he and Katie Knisley were

unable to locate any subsequent communications. He said the matter came up again at the commission meeting on December 2, 2021. He said there was discussion about where was the document and who was supposed to be working on it. He said since December 2, 2021, neither he nor Katie Knisley were able to find any direction from Mrs. Stephens or any direct request forward from the commission.

Mark Campbell suggested that City Council instruct City Staff to get an RFQ needs assessment put together as soon as possible.

Bryan Chodkowski explained the RFQ procedure.

Glenn Otto recommended that since there are a couple members of the commission present, Council should hear any comments they have.

Rhonda Sumlin said there was no need for City Staff to create a new RFQ as the commission has one completed and the RFQ just needs to move forward. She said City Staff has the RFQ, but she will send it to Anthony Rodgers, and he can send it to all of the City Council.

Mark Campbell said he does not care who has the RFQ. He said City Staff can complete an RFQ, and if there already is one, it will not take long to complete it, and get that out so bids can be received.

Nancy Byrge said she would like to see the RFQ before it goes out to make sure the commission has covered the breadth of what the commission and Council hopes to accomplish with the needs assessment.

Mark Campbell said he would like to see it before it is bid, but his point is it has been 15 months, and he just wants to get the RFQ out.

Rhonda Sumlin said she wants to go on record stating the commission has gone back and forth with this needs assessment and she does not want to point fingers about who did or did not do what. She said she wants to be sure when this RFQ is put out to bid that whoever is selected is someone overly qualified to handle a needs assessment of this breadth and needs to understand culture, diversity, equity and inclusion in the community. She said there are people in the community who do not believe this commission needs to exist. She said who is selected matters. She addressed her concerns with selecting a firm. She discussed with

Nancy Byrge that the commission had reached out to Miami Valley Regional Planning Commission and the National League of Cities regarding the RFQ.

Richard Shaw stated his displeasure at how long it has taken this action to get in front of Council when it has been on City Staff's table. He said this is the second time on this agenda Council has heard that a commission that reports directly to Council has been delayed in getting something to Council and he referenced the earlier conversation regarding the Parks and Recreation Board. He said those delays should be of concern to this Council.

Mayor Jeff Gore discussed the outline of Bryan Chodkowski's information, and he said the RFQ was never sent back to City Staff.

Richard Shaw said this commission was in front of Council in February, 2022 asking for a lot of items that have gone unaddressed on an agenda. He said there could be a legitimate breakdown in communication, but this issue is concerning.

Mayor Jeff Gore discussed the importance of the needs assessment and he said it needs to be done to have a roadmap of the things that need to be done.

Nancy Byrge said this issue, the one Josh King brought up, and dozens of other issues is systemic of the fact the City has done without a City Manager for over 15 months and one needs to be hired so City Staff can catch up on these items.

Glenn Otto said throughout the entire RFQ process, it is important the commission weighs in at every step Council takes and the commission should be directing the process and moving the item forward.

Rhonda Sumlin said Bryan Chodkowski also gave feedback to the commission. She said the commission would like to have some input in selecting the firm. She said if a minority company bids, the commission would like that bid to be considered.

Nancy Byrge said she hopes diverse firms submit bids, but needs assessments have been done in many cities with diverse populations that

may not have been done by minority firms. She asked if the City receives a bid from a fully qualified company that so happens to not be a minority company, is the commission open to using that firm?

Rhonda Sumlin said representation matters. She said sometimes you cannot get honesty and transparency from individuals that cannot relate to people they are talking to. She said she thinks the City can get the diversity and equity, but it is how it is solicited. She said if you state things like, "minorities encouraged to apply"- whatever is put out there is what you get back.

Nancy Byrge said the firms may be headed by a non-minority but have members within the group because there is need to go out into the cultural communities. She said she hopes the City does not limit itself in looking at potential contractors.

Rhonda Sumlin said it is important to change behaviors in how we do business, and one of the things the commission mentioned a long time ago is it wants to see more minority contractors being hired. She said the commission is not excluding, but the City needs to include other people.

After discussion, the City Council agreed to recommend approval of the necessary legislation to put out an RFQ for a culture and diversity needs assessment and requested that the necessary legislation be prepared and placed on the agenda at the July 11, 2022 City Council Meeting for a first reading as non-emergency legislation with adoption of the legislation at the July 11, 2022 City Council Meeting.

Citizens Review Board

Mayor Jeff Gore distributed information regarding a proposed Citizens Review Board (see attached). He said this item is one of the items listed as recommendations from the Cultural and Diversity Citizen Action Commission along with the needs assessment and other items. He said he has had discussions with Mark Campbell and Police Chief Mark Lightner. He said he does not think there are any issues in moving forward with a Citizens Review Board, but the details need to be figured out. He said the discussion that needs to happen with Council is what type of review board is needed. He said he has not heard that a review

board would interfere with police discussions or interfere with collective bargaining agreements.

Don Webb asked Police Chief Mark Lightner to give his vision of a citizens review board.

Police Chief Mark Lightner said the review boards he is aware of like the one in the City of Dayton are not part of the police department, it is separate from the police department. He said he has had high level conversations with the Reform Committee, and it has been mentioned that the members of the Reform Committee and he himself agree the Police Division does a very good job of policing itself. He said he understands and appreciates the benefit of a review committee also. He said he would like to be part of further conversations between the Reform Committee, the entire commission, and the City Council. He said he sees the benefit and knows where the commission is coming from. He said he has explained the policies and internal affairs process of the Police Division. He said the commission understands this board will not change the outcome of the findings of an investigation, but if there is any advice or recommendations given from the review committee for training or additional training, so on and so forth, he would be happy to entertain the recommendations.

Don Webb asked Rhonda Sumlin about her vision of the review committee.

Rhonda Sumlin said on June 16, 2021, the Reform Committee met with Police Chief Mark Lightner and the Acting City Manager Bryan Chodkowski to discuss the desire for an independent citizens complaint process and to review the Dayton Citizens Appeal Board process. She said the objective is to provide citizens with a supplemental process to address civil rights complaints against police officers and to provide a level of oversight and to increase transparency to enhance public trust. She said the recommendation of the commission was to establish an independent review board and she said this board would function similar to the Dayton Citizens Appeal Board (CCRB). She read the overview of the CCRB process which included that the CCRB can hold its own investigation and will report findings to the City Council. She said the CCRB has no authority to take disciplinary action against a police officer. She said the board's voting members should consist of a diverse

group of individuals who are Huber Heights residents. She said voting members should at least include an individual who is a former police officer and an individual from the legal community. She said Eric Stephens copies Council and Mayor Gore in an email on February 18, 2022, and gave comments based on some information shared in the Reform Committee and he gave four cities and various alternative cities that could be benchmarked.

Mayor Jeff Gore said regarding the appeal process, the Police Chief is not a Council employee, and Council cannot direct the Police Chief to do anything regarding the investigation. He said that direction would go through the City Manager. He said Council could not act directly regarding the decision-making process. He said he understands the context and purpose, but he is trying to think how that process works and what Council can do based on the City Charter. He said this matter needs to move forward, but there are a lot of details that need to be worked out. He said he does not see this as just an issue with the Police Division, this could be an issue with the Fire Division or someone who walks into City Hall for a zoning application and did not feel they were treated appropriately. He said this board could be City-wide and a way to have an independent review board look at complaints that were made.

Rhonda Sumlin said Yolanda Stephens was clear in his email and he was very specific. She encouraged Council to look at the City of Dayton's flow chart. She said the reason this board matters is the commission wants to get ahead of what could happen and does not want what happened in Akron to happen in Huber Heights. She said it should not be controlled by the City. She thanked Police Chief Mark Lightner for working with the commission. She said all they can do is recommend and bring this item to Council.

Mayor Jeff Gore said Council will review the recommendations at the next Council Work Session, and then once there is agreement on how the language and process should be, it can move to the next City Council Meeting.

Nancy Byrge asked Police Chief Mark Lightner how the City of Dayton protects the privacy of the parties involved?

Police Chief Mark Lightner said the Dayton Police Department does not operate this board. He said Huber Heights has an internal investigation and none of that information is released to any committee outside until completed. He said if the employee receives discipline, there is a process if the employee wants to contest that discipline. He said the employees and the union knows the citizens are not going to change the outcome of an investigation. He said this board is just an opportunity for someone who feels the police department did not get it right, to speak to someone else.

Nancy Byrge said she hopes until the process is completed, the privacy of all parties involved is protected because you are innocent until proven guilty. She said she would not want a citizen to make a complaint and then be ostracized for coming forward with what could be a valid concern.

Mayor Jeff Gore reiterated the decisions that need to be made and said this item will be discussed at the next Council Work Session.

Ed Lyons said this item was put on the agenda as a result of the Culture and Diversity Citizen Action Commission's public forum on racism that several Councilmembers attended. He said the eight points of the NAACP's recommendations still have not been implemented. He said this item was just for discussion tonight. He said two important decisions have been made. He said Council can get the plan in the Council Work Session meeting packet to familiarize themselves with the City of Dayton's program, and there are several others that can be reviewed. He said all questions may not be answered in the next Council Work Session but he knows this is a process.

Mayor Jeff Gore discussed attending the NAACP's press conference with Rob Schommer when Dr. Foward discussed the eight-point plan. He said part of that discussion was that the Culture and Diversity Citizen Action Commission would satisfy the point of a citizens review board. He said he wanted to make sure that piece of information is out there. He said the City is heading in the right direction.

Mark Campbell reviewed the highlights of the City of Dayton's review board with Rhonda Sumlin.

Rhonda Sumlin reviewed the legislation of the Culture and Diversity Citizen Action Commission and stated it is important to remember the citizens review board is a separate entity. She asked Bryan Chodkowski to talk to the Law Director about the capability of operating as a non-profit as it would be excellent if the CCRB could fall under the commission since the commission already falls under Council. She said the committees have been set up, and the CCRB could actually fall under the commission.

Mark Campbell said if Rhonda Sumlin has a model to share with Council, then that could be provided to the Law Director before the next Council Work Session. He said he thinks when they met to talk about the resolution, the commission could do one but not the other.

Glenn Otto suggested instead of going back and forth, Council could have a combined meeting with the Culture and Diversity Citizen Action Commission.

Mayor Jeff Gore said he would not be opposed to a specific meeting for that purpose and Ed Lyons and Rhonda Sumlin agreed. He asked Anthony Rodgers to put together a meeting date that would work.

Anthony Rodgers asked for clarification if this item is still going on the agenda at the next Council Work Session and then follow up with a joint meeting or is this joint meeting in place of the discussion at the next Council Work Session.

Mayor Jeff Gore said the joint meeting would be in place of being on the next Council Work Session agenda.

Bryan Chodkowski said maybe key members of City Staff and key members of the commission might be able to sit down and walk through the technical pillars of what the process might look like and then come back to Council and report areas for which there is a good agreement and basic understanding and areas where the parties cannot come to a mutual agreement and look for Council's guidance. He said rather than having 20 people in a room to talk at a high level, maybe put a few people in a room to get that foundation and bring that discussion back. He said this suggestion may get the process further along faster and he explained that line of thought.

Mayor Jeff Gore said based on the dialogue, if Bryan Chodkowski, Katie Knisley and some City Staff meet with some members of the commission, they can lay some ground rules and basics of how this is seen to work, make sure the legalities are out of the way, and bring something back. He said he still recommends having a joint meeting, but at least everyone will go into the joint meeting armed with some details.

Ed Lyons said he would like to continue the work in progress so if the joint meeting does not get scheduled Council can talk about it more.

Mayor Jeff Gore said he would leave the discussion on the review board on the next Council Work Session agenda even if it is for an update from City Staff that states a meeting is scheduled with the commission, and Anthony Rodgers will coordinate with Bryan Chodkowski on when the joint meeting is going to happen.

Glenn Otto said since this is the commission's initiative, he would like to give the commission the lead on this item.

Rhonda Sumlin said her recommendation is to move forward with the joint meeting and obviously City Staff could come to that meeting and hash it out. She said it seems the more everyone meets, the more things do not get done. She said if Council is open to meeting that would be her recommendation.

After conversation between Rhonda Sumlin and Mayor Jeff Gore, Mayor Jeff Gore said he would recommend what Bryan Chodkowski suggested and still keep the topic on the next Council Work Session and schedule a joint meeting.

Mark Campbell confirmed this matter is not an either/or meeting situation.

Bryan Chodkowski discussed the importance of the commission meeting with City Staff first to do things at the staff level that do not need to be a concern to Council.

Mayor Jeff Gore recommended Bryan Chodkowski schedule the meeting soon while Anthony Rodgers tries to set a meeting date with the commission and Council.

Kathleen Baker said her understanding when the commission started with this effort was that the commission could not be a 501(c)(3) and be under the City as the City gives that board money. She said that point stalled part of this effort too.

Anthony Rodgers said these things need to be worked out in the interim. He said the Law Director would have to look at what model fits best with the City.

Rules Of Council – Amendment – Council Absences

Don Webb distributed information regarding a proposed amendment to the 2022 Rules of Council to address City Council absences from City Council Meetings (see attached). He said he passed out information to Council (see attached) and he said he asked for this item to be on the agenda to address the issue of Councilmembers missing meetings to affect the outcome of the vote. He read (M) Attendance, Absences, and Removals of the 2022 Rules of Council. He emphasized the passage “Councilmembers are required and expected to attend all regular Council meetings.” He said all Councilmembers make a conscious decision to attend or not attend a meeting. He said the current City Manager vote before them is just one of many decisions that this Council has to make. He said Council’s votes impact the lives of citizens in Huber Heights. He said he read the reference from Gerald McDonald that was in reference to the Campbell Berling decision. He said Gerald McDonald noted an earlier suggestion by then Mayor Tom McMasters to change the Rules of Council deeming an absent Councilmember as being a “no” vote on legislation. He said the opinion was sent to Councilmembers at the time and Gerald McDonald’s opinion was this practice can be instituted through an action of Council to amend the Rules of Council. He asked Council to change the current Rules of Council to state an absent member be counted as a “no” vote. He asked for this item to be placed on Monday’s City Council Meeting agenda.

Glenn Otto said he recalls that discussion and remembers at the time there were a lot of particular Councilmembers missing meetings to not allow the Mayor to break a tie vote. He asked if this is a question of attendance records, and said he puts his record up against everybody. He asked if it a question of whose attendance or a question of attendance for which purpose? He said there is a whole lot of the devil in the details.

He said this matter is being brought forward because some do not like the way the Rules of Council are working. He said a lot of the rules were changed when Mayor McMasters came into office to tighten the reigns. He said as soon as Mayor McMasters left, the rules were rolled back. He said there is a lot of playing around with this Council. He said the rules can be changed every year or two years because a certain group does not like another group, and they happen to have the numbers at the time, so they are going to punish them. He said going back and forth like that is dishonest. He said why not set standard rules because they are the best rules and live by those rules. He said others have mentioned games being played, and there are definitely games being played. He said this practice has been going on for years and years and this has not just started. He said as soon as the gander catches what the goose caught; they are upset. He said this effort is all very shallow and an attempt to create a narrative and to change the rules to create an outcome some would like.

Don Webb said Councilmembers are required and expected to attend all regular City Council Meetings. He said it is time to get a handle on this situation and to do what they were elected to do which is to show up and vote. He asked Glenn Otto if he thought the residents elected them to boycott meetings so a vote can be influenced. He said if so, he is very mistaken.

Glenn Otto said he was elected to come in and do what is right for the entire community, not right for four Councilmembers or three Councilmembers, but right for the majority of the community. He said there is a reason the Rules of Council and City Charter are the way they are, and that is so they are not controlled by a few members. He said when Council is trying to say there is a minority and majority because everyone is a member of Council including the Mayor, that is simply not true. He said there cannot be a meeting with just four Councilmembers and a Mayor, there has to be five Councilmembers present.

There was a discussion between Mayor Jeff Gore and Glenn Otto regarding a quorum.

Don Webb asked if Glenn Otto is suggesting that it is okay to deliberately miss a meeting to influence a vote when the City Charter was written so should there be a tie of 4 to 4, the Mayor could break that tie.

Glenn Otto said to quote many attorneys, it is not illegal or unethical.

Don Webb said the City has millions of dollars of taxpayer money invested in Marian Meadows and Executive Boulevard and he asked if he sees these games going forward holding Council back from being able to complete those projects. He asked if Glenn Otto wants to play these games into the future.

Glenn Otto said the City paid \$30,000.00 to find a qualified City Manager, narrowed it down to four candidates, and only one candidate met all of the qualifications, and Council cannot even give the applicant the courtesy of a vote.

Mayor Jeff Gore said he expects a discussion, and he expects everyone to be calm enough to explain their rationalization. He said nowhere publicly or privately has he heard Glenn Otto promote that particular person until the racial bias issue became an issue. He said that candidate was not pushed forward by him.

Glenn Otto said his top two candidates were Luke Sims and Gerald Smith, so he has been there from the very beginning. He said Gerald Smith was the only one that carried all of the qualification that Council specifically requested, and Luke Sims was very exciting.

Glenn Otto and Mayor Jeff Gore debated about Glenn Otto's top two versus his top candidate.

Don Webb said he would like the rest of Council to weigh in on this issue.

Ed Lyons confirmed if he has a daughter that gets into an accident and he goes to the hospital instead of attending the City Council Meeting, if that City Council Meeting had funding for three additional firefighters which he has been supporting for years now, according to Don Webb's change in the Rules of Council, his vote would be recorded as an automatic no. He said he has a real problem with someone voting for him automatically, so he will be against Don Webb's recommendations.

Kathleen Baker said she would be in favor of the change.

Richard Shaw said a few years ago he moved his mother to this community because he is her primary caregiver. He said some of her appointments are very far away, and some have been overnight. He said if there was a vote on a particular item whether it was for funding or personnel issues, because he had to take his mother to those appointments, that would be a no vote. He asked Don Webb to consider the ramifications of these scenarios as several Councilmembers on the dais have multiple vacations planned on an annual basis and miss meetings, and those ramifications can go both ways. He said he would hate an item be voted down because of his absence in that scenario. He said for the longest time, he has respected Don Webb's realness and coming from Planning Commission he feels he has been able to keep his emotions at bay and be an individual that can think in real time and in some instances independently. He asked Don Webb if he cannot get five Councilmembers to agree on a City Manager vote, what makes him think he is going to get five Councilmembers to agree on a Rules of Council change that in part affects the City Charter that cannot be updated at this time?

Don Webb replied because it is the right thing to do. He said in Ed Lyons' case, if he misses a meeting and his vote is counted as a no and the motion fails, all Councilmembers are aware that at the next meeting the negative votes can ask for a motion to reconsider. He said if a motion fails, Ed Lyons could come to the next meeting and ask for a motion to reconsider. He said the biggest issue is there are Councilmembers willing to miss a meeting to sway the outcome of a vote. He said something needs to be done. He read Gerald McDonald's final statement in his email that he handed out to Council stating that Gerald McDonald is not sure how to draft a deemed no vote and keep with the spirit of the City Charter, but if it is Council's desire, he believes legally he can do so. He said something needs to happen to address this issue now.

Richard Shaw said there is nothing in the City Charter or the Rules of Council that states every member of Council has to be present for a vote. He said at the same time, people are changing the rules because of a situation they do not like. He asked Don Webb if it is his opinion that at the last City Council Meeting, a vote could have taken place for City Manager with seven members of Council present with the current Rules of Council and the City Charter.

Don Webb said certainly it could have. He confirmed with Richard Shaw that he is defending the right for a Councilmember to be absent in order to guarantee the vote.

Richard Shaw said there is no case law in the State of Ohio or in the country that states what Gerald McDonald has stated. He discussed the previous Council Work Session when it was recommended a City Manager search process restart item would go to a vote at the next meeting with an accompanying piece and if that vote failed, Council would restart the process. He said the next day a City Council Special Meeting was held where Council entered into an energy aggregation program for the community with seven members present. He asked Don Webb if a vote could have taken place regarding the City Manager item.

Don Webb said he would not speak to hypotheticals.

Mayor Jeff Gore said he made the decision not to, and as Mayor he is allowed to do that.

Richard Shaw asked Don Webb if a vote could have taken place without the Mayor's interference?

Don Webb said that is a loaded question. He said it is a hypothetical and he will not answer it.

Richard Shaw said if that is the case, who is playing games?

Don Webb replied those not showing up to vote.

Anita Kitchen said she has been lumped into something she has nothing to do with. She said people may not like how she votes, but she does her job.

Mayor Jeff Gore read a Facebook post Richard Shaw posted in July, 2015 stating it was nice to see the City Council show up. He read a response from Richard Shaw to Frank Wiley stating that the Mayor wants a tie vote so he can vote and that is not going to happen. Mayor Jeff Gore continued reading messages and statements from Richard Shaw and Glenn Otto from 2015 to the present. He discussed the pay Councilmembers receive to do their job.

Glenn Otto discussed examples where several Councilmembers called off so a meeting would not take place. He said he would put his attendance record against anyone's record. He said it is his job to ensure the best potential scenario for this community. He said he will take whatever action he feels is legal that he can take to ensure this City has the best and most qualified person possible for City Manager. He said he will not apologize for that.

Don Webb said this item probably will not pass. He reiterated the responsibility of Councilmembers to show up and vote.

A lengthy debate continued among the Councilmembers.

Mark Campbell said this item probably will not pass. He asked Mayor Jeff Gore if the item can be moved to a second reading.

Mayor Jeff Gore said he has the ability to move any item to a second, third, fourth, fifth, or thirty-seven reading.

Don Webb said Council needs to make a very important decision in hiring a City Manager so all should show up and vote, and if your side or his side loses, so be it as the Council has done its work.

Glenn Otto said a new City Manager should not be approved by just four people. He said if five, six, seven, or all eight people cannot agree that a person will be a great City Manager, then it is probably not a good decision. He said the process should be restarted so Council can find someone the majority of Councilmembers can agree on.

There was additional discussion by the City Council on the City Manager search process.

Nancy Byrge said potential candidates are watching these meetings. She said after watching this shit show, who is going to apply for a job? She said there were four finalist candidates, and Gerald Smith did not rise to the top of those four candidates. She discussed the City Charter and candidate qualifications. She said someone could be educated out their ears and still may not be qualified for this job. She said it takes far more experience than just having those degrees.

Mark Campbell asked Anthony Rodgers to retrieve and read an email from Baker Tilly regarding the qualifications of all four candidates.

Richard Shaw asked Anthony Rodgers to retrieve and read an email response from Baker Tilly regarding the denial to his request for additional questions to all four candidates as he was not present at the Council Work Session for the interviews.

Mayor Jeff Gore said out of the four people that Council said were qualified and brought forward, Council has tried to hire three of them, and he does not know what else to do. He asked Anthony Rodgers what has to happen for Executive Session information to be released.

Anthony Rodgers said typically Councilmembers are bound by the confidentiality of Executive Session unless all Councilmembers agree to waive that privilege.

Anthony Rodgers read the email from Patty Heminover of Baker Tilly stating that John Russell and Luke Sims met the requirements with an equivalent combination of education and experience.

Mayor Jeff Gore said he defends John Russell who was absolutely qualified for the City Manager position.

A lengthy discussion continued among the City Council regarding John Russell's qualifications, and Mr. Shaw's denial of an opportunity to ask questions of the candidates.

The discussion resumed regarding Councilmembers not showing up to vote.

Glenn Otto said similar games were played to put Don Webb in his seat.

After discussion, the City Council agreed to recommend the necessary motion to amend the 2022 Rules of Council as proposed by Don Webb to address Council absences be prepared and placed on the agenda at the July 11, 2022 City Council Meeting for consideration for adoption at the July 11, 2022 City Council Meeting.

Executive Session – Under Ohio Revised Code 121.22(G)(5) To Discuss Trade Secrets Associated With Certain Leases For The Former CR Dayton Property Which Are Confidential As Trade Secrets Under Ohio Revised Code 1333.61

Mark Campbell made a motion to go into Executive Session under Ohio Revised Code Section 121.22(G)(5) to discuss trade secrets associated with certain leases for the former CR Dayton property which are confidential as trade secrets under Ohio Revised Code Section 1333.61 at 9:57 P.M. Kathleen Baker seconded the motion. On a call of the vote, Ms. Baker, Mr. Campbell, Mrs. Byrge, Mrs. Kitchen, Mr. Webb, and Mr. Shaw voted yea; Mr. Otto and Mr. Lyons voted nay. The motion passed 6-2. The Council Work Session went into Executive Session at 9:57 P.M.

The Council Work Session adjourned from Executive Session at 10:03 P.M.

Following the Executive Session, Mayor Jeff Gore stated that the City Council agreed to recommend approval of placing a resolution for a first reading to authorize the execution of a lease for 6053 Brandt Pike at the former CR Dayton property (see attached) and requested that the proposed item be placed on the agenda at the July 11, 2022 City Council Meeting:

Other Business

There was no other business conducted at the Council Work Session.

4. **Adjournment**

Mayor Jeff Gore adjourned the Council Work Session at 10:04 P.M.

AI-8493

Topics of Discussion B.

Council Work Session

Meeting Date: 07/05/2022

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

Disposal of Surplus Property - Amendment

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

AI-8504

Topics of Discussion C.

Council Work Session

Meeting Date: 07/05/2022

East Water Main Extension Project - Award Contract

Submitted By: Hanane Eisentraut

Department: Engineering **Division:** Engineering

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

East Water Main Extension Project - Award Contract

Purpose and Background

This legislation will authorize the City Manager to enter into a contract with C. G. Construction & Utilities Inc. as the lowest and best bidder for the East Water Main Extension Project. Federal grant dollars as part of the American Rescue Plan Act (ARPA) will be utilized to construct this project at a cost not to exceed \$3,000,000 that will be appropriated in the Water Utility Reserve Fund. The proposed improvement of the East Water Main Extension Project includes the installation of approximately 7890 linear feet of 16" water main, complete with appurtenances, along Bellefontaine Road from 7060 Bellefontaine Road to a connection point at the intersection of Bellefontaine Road and Center Point 70 Boulevard.

Fiscal Impact

Source of Funds: See Financial Implications

Cost: \$3,000,000

Recurring Cost? (Yes/No): No

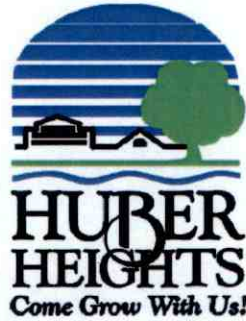
Funds Available in Current Budget? (Yes/No): Yes

Financial Implications:

The ARPA Fund will reimburse the Water Utility Reserve Fund for this project.

Attachments

Bid Results
Resolution



**CITY OF HUBER HEIGHTS
EAST WATER MAIN EXTENSION
BID RESULT
BID DATE: JUNE 24, 2022**

CONTRACTOR'S NAME	BID AMOUNT	
Brackney, Inc	\$3,902,976.00	365 Calendar Days
	Bid Bond - Yes	
C.G.Construction	\$ 2,936,765.00	500 Calendar Days
	Bid Bond - Yes	
Outdoor	\$ 3,118,605.50	677 Calendar Days
	Bid Bond - Yes	
Kinnison Excavating	\$4,134,390.00	300 Calendar Days
	Bid Bond - Yes	

CITY OF HUBER HEIGHTS
STATE OF OHIO

RESOLUTION NO. 2022-R-

INCREASING THE NOT TO EXCEED AMOUNT AND AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT FOR THE EAST WATER MAIN EXTENSION PROJECT.

WHEREAS, City Council under Resolution No. 2022-R-7129, dated May 23, 2022, has previously authorized the securing of bids for the East Water Main Extension Project; and

WHEREAS, construction bids were received on June 24, 2022; and

WHEREAS, there are adequate funds available to cover the cost of this work.

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

Section 1. The City Manager is hereby authorized to enter into a contract for the East Water Main Extension Project with C.G. Construction & Utilities, Inc. as the lowest and best bidder at a cost not to exceed \$3,000,000.00 on the terms and conditions as substantially set forth in the specifications of the contract.

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 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 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-8509

Topics of Discussion D.

Council Work Session

Meeting Date: 07/05/2022

Water Distribution Vouchers

Submitted By: Anthony Rodgers

Department: City Council

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

Water Distribution Vouchers

Purpose and Background

Councilmember Anita Kitchen requested this agenda item for discussion on the implementation of a water distribution voucher program for residents affected by water main breaks.

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-8474

Topics of Discussion E.

Council Work Session

Meeting Date: 07/05/2022

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

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

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

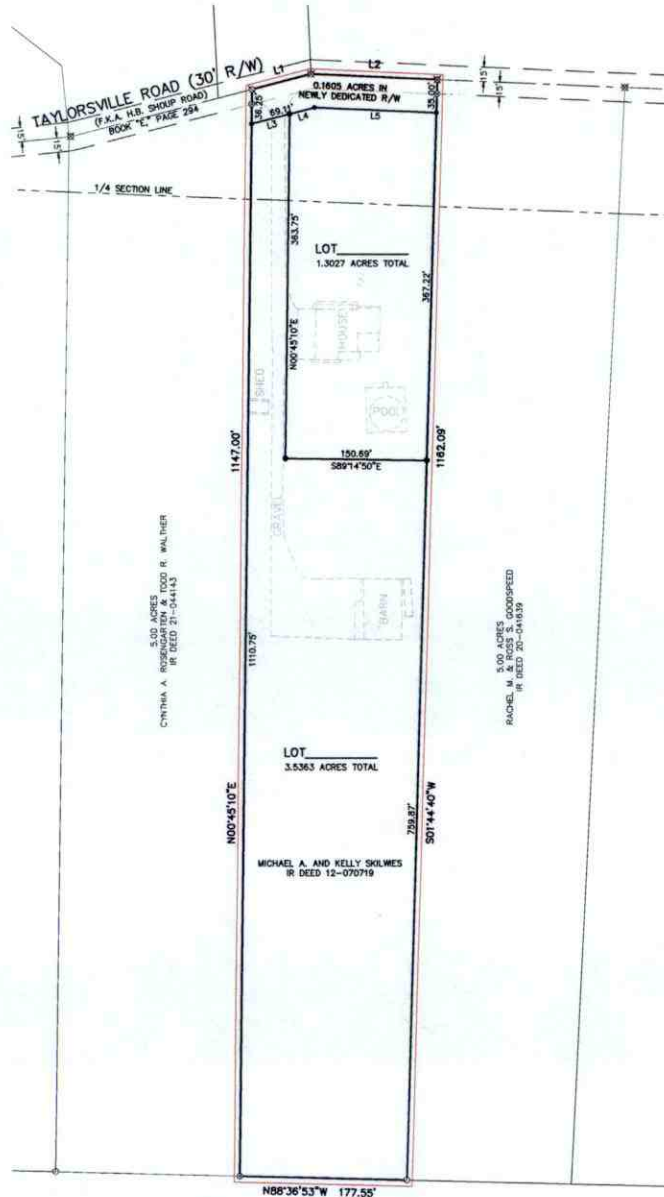
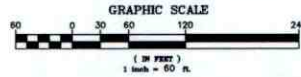
Minutes

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



BASES 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.

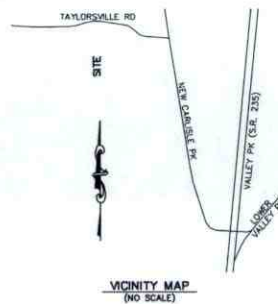
GENERAL NOTES:
• OCCUPATION, IN GENERAL, FITS THE SURVEY.
• ALL MONUMENTS WERE FOUND OR SET IN GOOD CONDITION.

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	BEARING	LENGTH
L1	N75°36'50"E	64.82'
L2	S87°34'44"E	135.13'
L3	N75°36'50"E	41.45'
L4	N75°36'50"E	27.86'
L5	S87°34'44"E	130.38'



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
1/2	FOUND PK/MAG NAIL
o	FOUND 5/8" IRON PIN
o	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:

OWNERS:

WITNESSES:

Print Name:

MICHAEL A. SKILWIES

Print Name:

KELLY SKILWIES

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 4753.37 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. 5-7143

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

23.879 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 $\frac{1}{4}$ to $\frac{1}{2}$ 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.

- (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.

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.

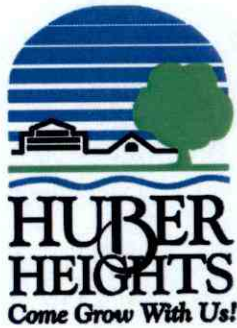
If the Planning Commission determines the rezoning request is consistent with the standards outlined in Section 1171.06, staff recommends the following conditions:

- 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 and 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

RZ 22-17
9416 Taylorsville Rd

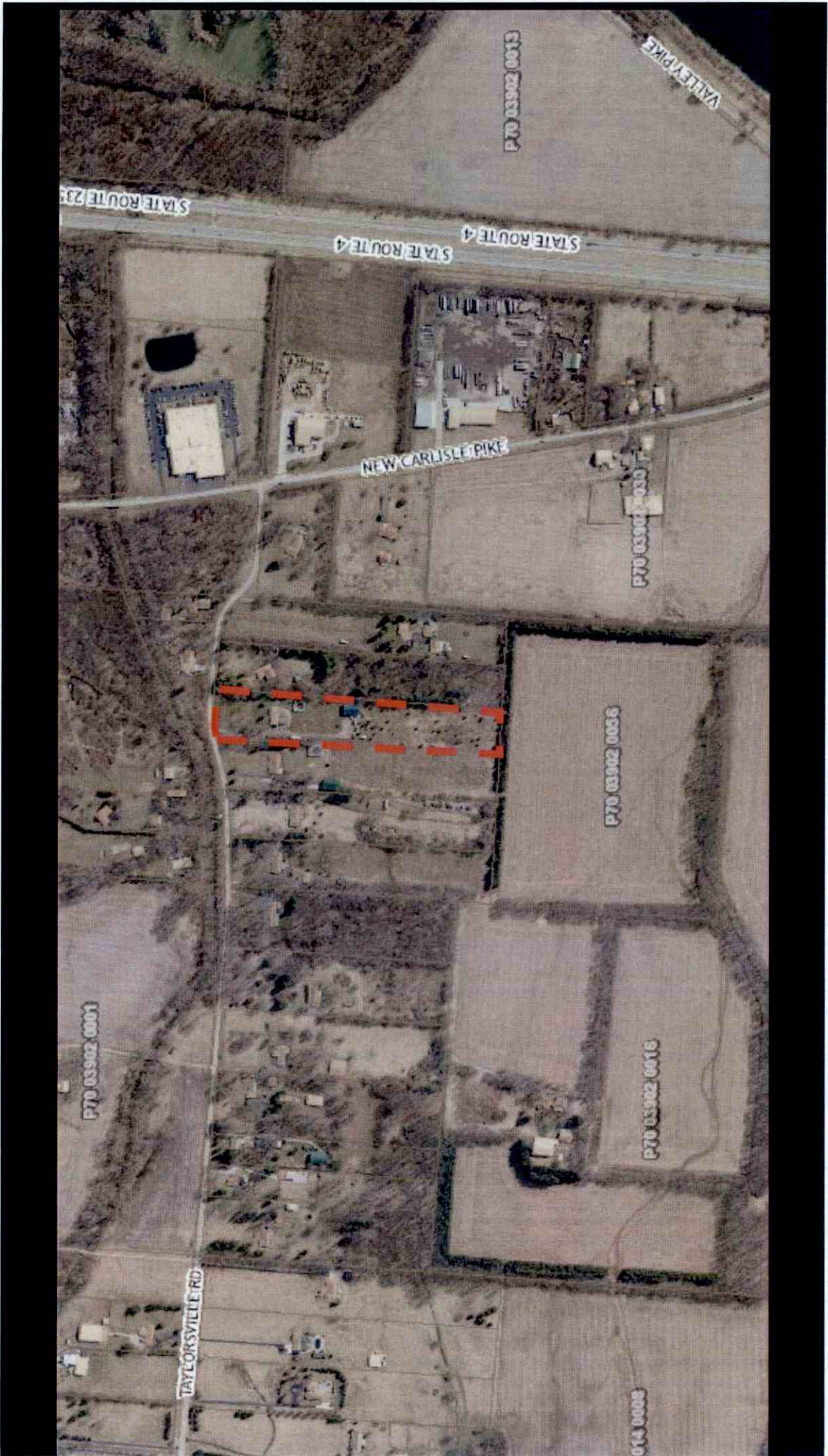
Request for Approval of Rezoning and Replat
July 5, 2022

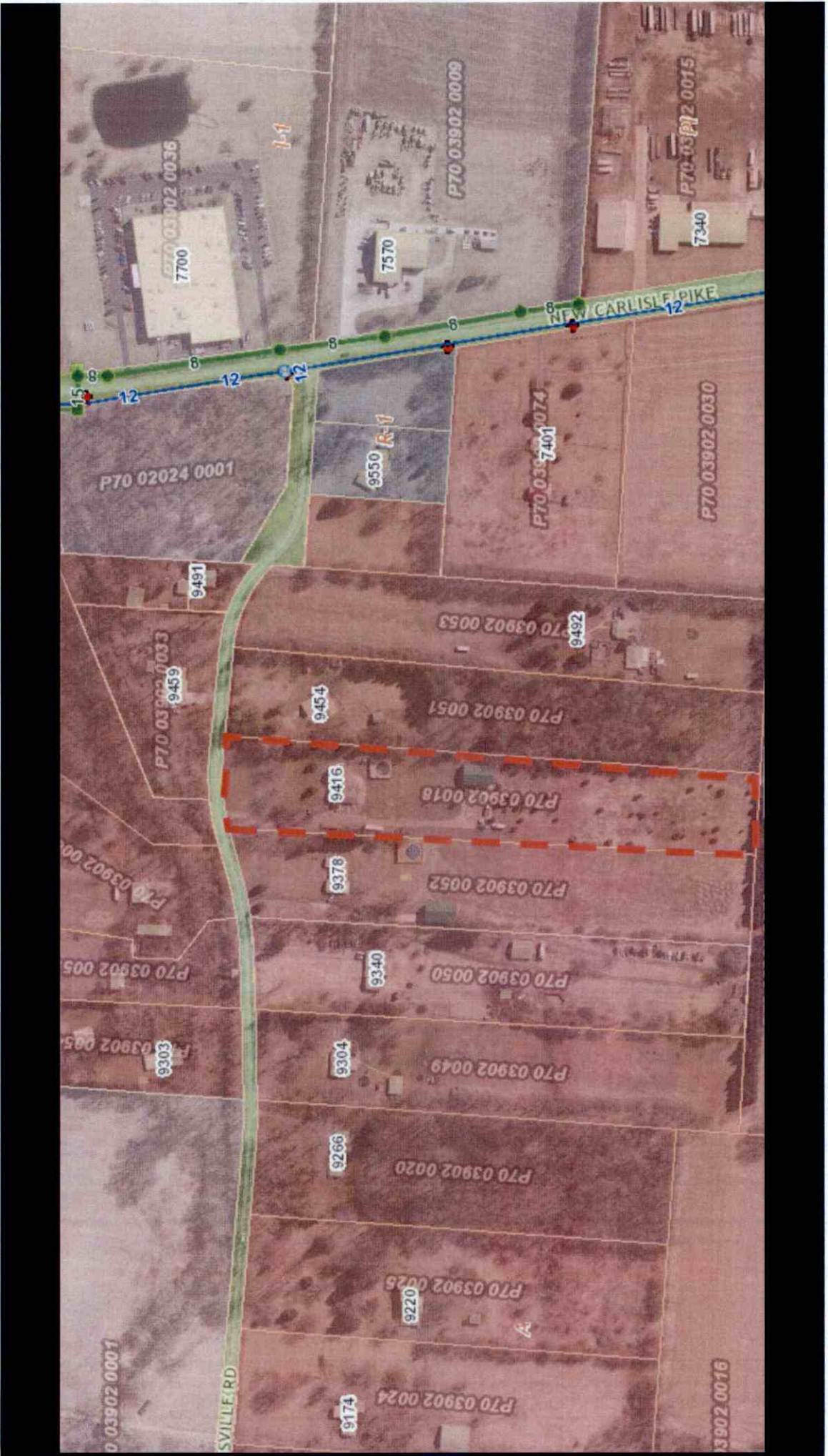
Site Details:

- 5 acres, zoned A (Agricultural)
- Existing land use is residential
- Surrounding property is zoned Agricultural

Application:

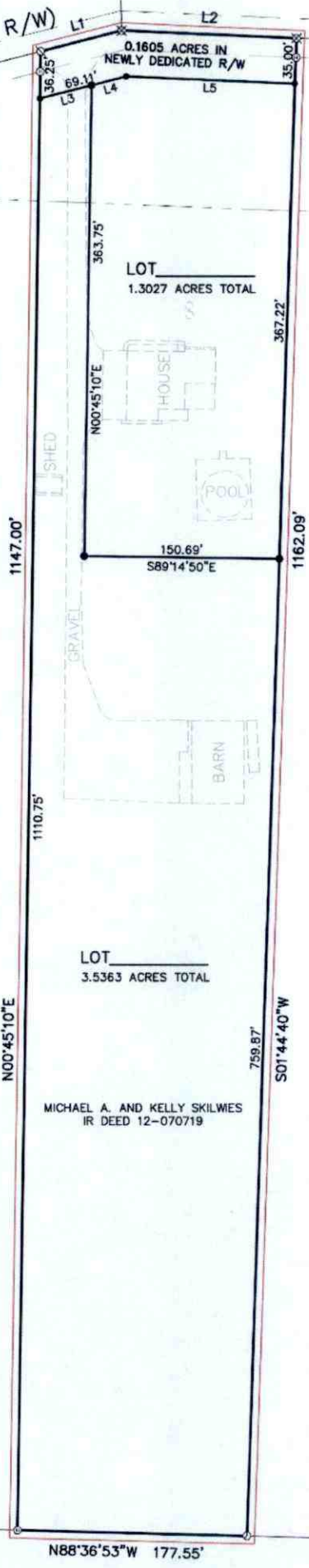
- Applicant is requesting a replat of 3.5 acres and a rezoning to Planned Industrial to accommodate existing diesel truck / equipment repair business.
- 1.5 acres (residence) will remain zoned Agricultural





E ROAD (30' R/W)
H.B. SHOUP ROAD
OK "E" PAGE 284

SECTION LINE



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

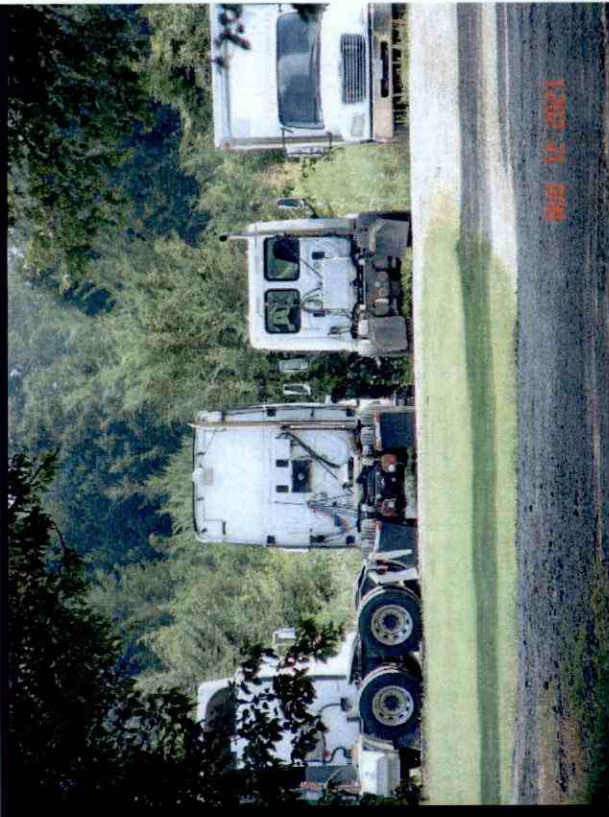
5.00 ACRES
RACHEL M. & ROSS S. GOODSPEED
IR DEED 20-041639

MICHAEL A. AND KELLY SKILWIES
IR DEED 12-070719

23.878 ACRES
ALBERT J. MURN

Site History:

- Applicant has been operating the repair facility for many years.
- August 2021:
 - Complaint led to zoning enforcement action
 - Applicant requested use variance
 - BZA unanimously denied variance application



Site History:

- City staff instructed applicant they could apply for lot split and rezoning as an alternative path forward
- March 2022:
 - Zoning enforcement action initiated
 - Applicant filed a rezoning / lot split application



Lot Split Staff Analysis

The subdivision of the 5-acre parcel into two new lots will create one minor nonconformity:

- 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.

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

Conformance with Zoning Regulations

1177.01 Principal permitted uses.

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

1177.03 Development standards.

- No Basic Plan submitted, however based on the plat survey the lot meets the PI development standards.

Conformance with Zoning Regulations

1177.04 Conditions.

All uses shall be conducted wholly within a completely enclosed building..... No use shall be permitted to be established or maintained which is or may become hazardous, noxious or offensive owing to the emission of odor, dust, smoke, cinders, gas fumes, noise,

- If the rezoning is approved, the applicant will be required to move his repair operations wholly indoors. The applicant is aware of this condition.
- The site is not readily visible from the street, any violations of this condition will likely only be triggered by complaints made by adjacent property owners or residents.

Staff Analysis

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 and the proposed rezoning is not consistent with the comprehensive plan.

Staff Analysis

(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;

- This rezoning request ultimately arose due to complaints regarding the operation of a truck / heavy equipment repair facility
- 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.

Staff Analysis

(k) Continued:

- Additional concerns were raised about the potential contamination of drinking water wells due to fluid leaks or spills.
- 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.

Staff Analysis

- (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 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.

Planning Commission Action:

- Adjacent neighbors spoke in opposition to the rezoning request
- Planning Commission voted 4-1 to deny the rezoning request.

Staff Recommendation

If Council 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;

Staff Recommendation

Continued:

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;

AI-8513

Topics of Discussion F.

Council Work Session

Meeting Date: 07/05/2022

Falls Creek Park - Name Change

Submitted By: Josh King

Department: Planning

Division: Parks and Recreation

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

Falls Creek Park - Name Change

Purpose and Background

In October, 2021, the Parks and Recreation Board voted to rename Falls Creek Park in honor of Dennis Philipps. Five board members were present and voted 5-0 in favor of the renaming. In May, 2022,, the board discussed the process again and discussed just putting up a plaque on the large boulder in the park in honor of Dennis Philipps.

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

Minutes - October 21, 2021

Minutes - May 19, 2022

**Parks and Recreation Board
Work Session Minutes
City of Huber Heights
October 21, 2021**

I. Chair Vincent King called the meeting to order at approximately 6:31 p.m.

II. Present at the meeting: Vincent King, Chair, Chris Hall, Glenn Pottenger, Blake Herstine, Matt Teague and Ron Eifert

Members Absent: Bryan Detty, Vice Chair, Alex Black, Sydney Smith Denis Snider,

Staff Present: Josh King, Parks Manager, City of Huber Heights & Chris Lindeman, Executive Director, YMCA at the Heights

III. Opening Remarks

1. Mr. King had none at this time.

IV. Citizen's Comments

1. None

V. Old Business

1. Long Term Leasing Agreement

- a. Going to council on Monday, October 25th for approval for a five-year agreement with HHGSA for baseball and softball fields at Cloud Park and Monita Fields.
- b. Trying to locate someone else to recondition the fields at Monita before the start of the spring season.

2. YMCA Update

- a. The YMCA has 568 shelter rentals in 2021 for the parks system in Huber Heights. June and July were the biggest months with 109 and 106 rentals.
- b. 5K run on 10/30 has been canceled due to low registration. Another 5K race is scheduled for 11/13.
- c. On Monday, October 25th, council will hear the first reading on improvements at the Kroger Aquatic Center, which includes cleaning and painting of the slides and slide tower.

3. Parks Manager Update

- a. Monita Fields has ongoing construction on the pump track and BMX park. The skate ramps have been delayed by an extra week. Perimeter will be finished in the springtime.
- b. Movie and Music season has finished up for 2021. It went very well and Josh will be looking at the season and making changes for 2022.
- c. Eichelberger Playground has not much movement on it. Josh is waiting on the final design and council will need to approve it for final passage and construction.

4. Dog Gone Pawrade

- a. Board talked about the final details for the pet parade being held on Saturday, October 30th. People can register the day of the event or check the Park & Recreation Facebook page for the all the details.
5. Falls Creek
 - a. The board voted to move forward with a renaming process at Falls Creek Park in honor of Denny Philips. Motioned by Christopher Hall, 2nd by Glenn Pottenger, Vote 5-0
 - b. The motion will go to council for the final approval.
6. Programming & Events
 - a. Mr. Vince King asked the board to begin thinking about programs and events for the spring and summer in the parks system.
 - b. July is National Park & Recreation Month
 - c. Mr. King is working with local businesses to get them involved.
 - d. More Health & Wellness Programming in the parks system is also a focus for 2022.
 - e. Geocaching is also a focus with 35 sites within the city limits of Huber Heights. Mr. Teague is working to get more people involved in geocaching with over 6.5 million people participating around the world. Looking at possibly creating some type of passport that people can use.
7. Parks Cleanup
 - a. The last parks cleanup was held at the Community Center.

VI. New Business

1. None

VII. Additional Business and Announcements

1. Naming of Skate/BMX park at Monita Fields
 - a. Looking at corporate sponsorship for the naming rights for the Monita Fields work. It would be like the naming agreement of the aquatic center.

VIII. Approval of Minutes

1. Meeting Minutes from September 16, 2021, were approved as written.

IX. Upcoming Meetings

1. November 18, 2021, at 6:30 p.m.

X. Adjournment

1. Meeting was adjourned at 7:30 pm.



Vincent King, Parks & Recreation Chair



Chris Lindeman, YMCA at the Heights, Executive Dir.

18 Nov 21

Date

11/18/21

Date

**Parks and Recreation Board
Work Session Minutes
City of Huber Heights
May 19, 2022**

- I. Chair Vincent King called the meeting to order at approximately 6:33 p.m.
- II. Present at the meeting: Vincent King, Chair, Alex Black, Vice Chair Bryan Detty, Christopher Hall, Dennis Snider, and Ron Eifert

Members Absent: Matt Teague, Glenn Pottenger, Blake Herstine, Sydney Smith

Staff Present: Josh King, Parks Manager, City of Huber Heights
- III. **Opening Remarks**
 1. None
- IV. **Citizen's Comments**
 1. A citizen had a concern about a walking path connector being behind her house and cutting away brush in the new Dial Park. The issue was resolved.
 2. Citizen asked for name plates for members.
- V. **Old Business**
 1. YMCA at the Heights Update
 - a. Reserved 225 shelters in the parks system. June is filled up with rentals.
 - b. Instructors are in place for community group exercise classes on Saturday mornings at the Eichelberger Amphitheater. Classes start at 9:00 am.
 - c. Kroger Aquatic Center passed its health inspection and will open on Saturday, May 28th.
 2. Parks Manager Update
 - a. Eichelberger Amphitheater playground should be finished this week.
 - b. Community Park playground as well next week. Its only half of the playground as we are awaiting word on the grant from the Christopher Reeves Foundation on the handicap swing.
 - c. 2022 Music Series kicks off in two weeks. 12 shows this season with three shows each month.

3. Programming

- a. Earth Day Results: 60 to 70 people throughout the day. Community gardens were cleaned up and Mr. Herstine did a survey of participants to find out what they wanted to see at the Community Center. Mr. Vince King will send out the results to the board members.
- b. Star Spangled Celebration Volunteers: Board members were asked to volunteer at the Star-Spangled Celebration.
- c. October Event: The boards of the city are working together to try and offer a family fall event

VI. New Business

1. Falls Creek Park Renaming

- a. The board discussed the ability of naming parks and how the city would be going about in the future in the renaming of parks within the system. They also discussed the memorial program in parks and how city residents could be memorialized.

2. Memorial Tree Program

- a. Mr. Josh King reached out to the city of Vandalia to see what their memorial tree program looks like for their parks. Mr. King has a wholesale list of trees that can be purchased by the families and planted by the city. Also, memorial benches are also being looked at for memorials in the parks.
- b. A final draft of the procedure will be presented to the board at the June meeting.

VII. Additional Business and Announcements

1. Farmer's Market is going well with good attendance.
2. June 25th: Multicultural Festival, July 2nd: Star-Spangled Banner, September 10th: Marigold Festival
3. June 11th: Grand Opening at Monita Field Bike Park

VIII. Approval of Minutes

1. Meeting Minutes from April 21, 2022 were approved as written.

IX. Upcoming Meetings

1. June 16, 2022, at 6:30 p.m.

X. Adjournment

1. Meeting was adjourned at 7:26 pm.

Vincent King, Parks & Recreation Chair

Date

Chris Lindeman, YMCA at the Heights, Executive Dir.

Date

AI-8514

Topics of Discussion G.

Council Work Session

Meeting Date: 07/05/2022

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

Submitted By: Jim Bell

Department: Finance

Division: Accounting

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

Carriage Trails – Special Assessments – Sections 2-5/7-5

* Resolution Of Necessity

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.

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-

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:

Cassandra L. Riehle
Witness
Diana Keethler
Witness

DEC LAND CO. I LLC

By: Carriage Trails at The Heights LLC

Its: Managing Member

By: [Signature]

Printed: William W. Keethler II

Title: President

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

Cassandra L. Riehle
Notary Public

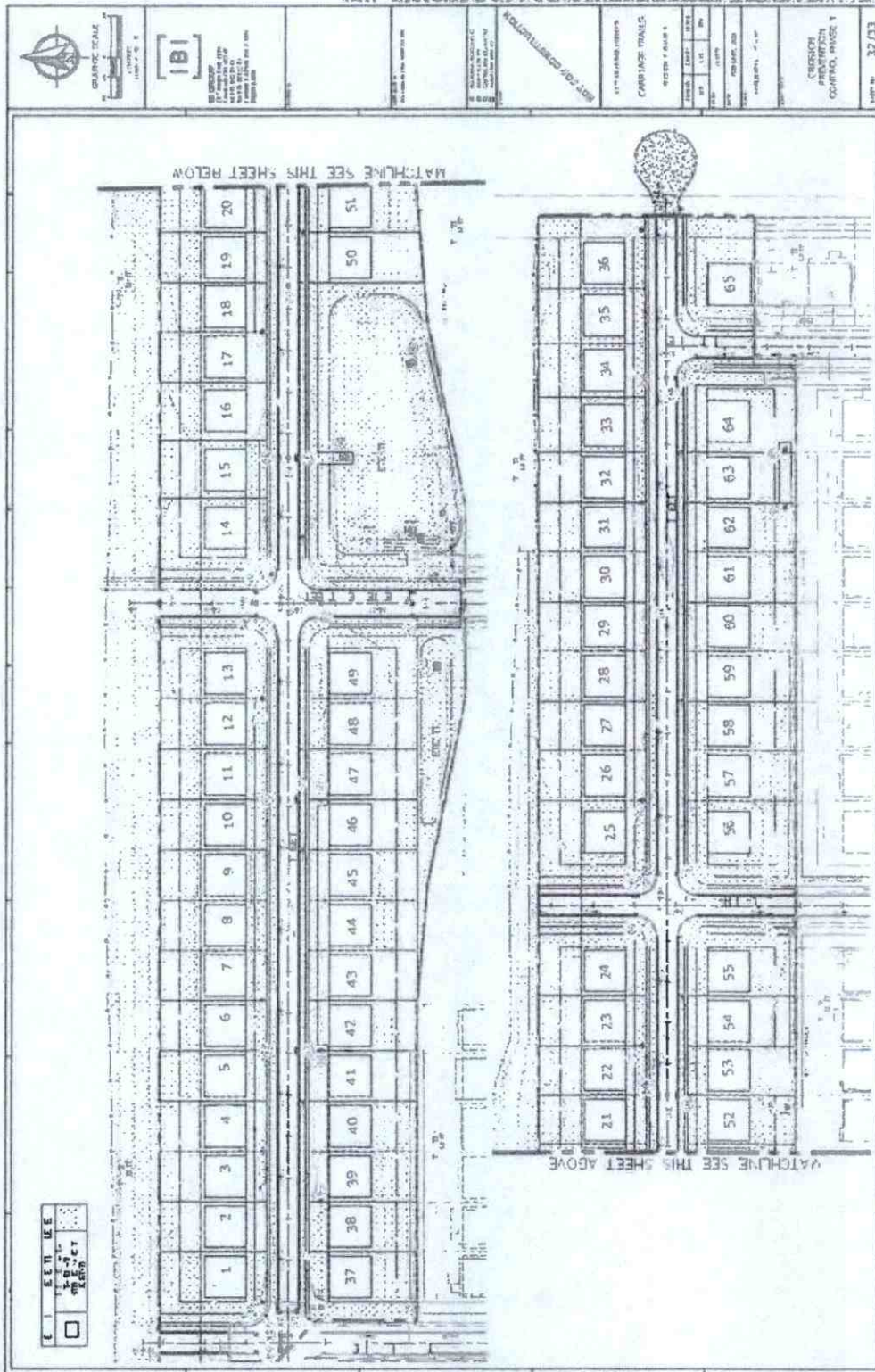
ATTACHMENT A-1

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-8515

Topics of Discussion

Council Work Session

Meeting Date: 07/05/2022

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

Submitted By: Jim Bell

Department: Finance

Division: Accounting

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

* Ordinance To Proceed

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.

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 - 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. 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-8512

Topics of Discussion H.

Council Work Session

Meeting Date: 07/05/2022

Retire/Rehire - Anthony Rodgers

Submitted By: Anthony Rodgers

Department: City Council

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

Audio-Visual Needs: None **Emergency Legislation?:**

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

Agenda Item Description or Legislation Title

Retire/Rehire - Anthony Rodgers

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-8510

Topics of Discussion I.

Council Work Session

Meeting Date: 07/05/2022

Culture and Diversity Needs Assessment

Submitted By: Anthony Rodgers

Department: City Council

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

Culture and Diversity Needs Assessment

Purpose and Background

This agenda item is to discuss the culture and diversity needs assessment undertaken by the Culture and Diversity Citizen Action Commission.

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-8511

Topics of Discussion J.

Council Work Session

Meeting Date: 07/05/2022

Citizens Review Board

Submitted By: Anthony Rodgers

Department: City Council

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

Citizens Review Board

Purpose and Background

This agenda item was requested by Councilmembers Ed Lyons, Glenn Otto, and Richard Shaw to discuss a Citizens Review Board as proposed by the Culture and Diversity Citizen Action Commission.

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-8516

Topics of Discussion K.

Council Work Session

Meeting Date: 07/05/2022

Rules Of Council - Amendment - Council Absences

Submitted By: Anthony Rodgers

Department: City Council

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

Rules Of Council - Amendment - Council Absences

Purpose and Background

This agenda item was requested by Councilmembers Don Webb, Nancy Byrge, Mark Campbell, and Kathleen Baker to discuss proposed amendments to the Rules Of Council regarding Council absences.

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.

From: McDonald, Gerald
To: Lyons, Ed; Otto, Glenn; J Blankenship; J Smith; Campbell, Mark; Byrge, Nancy; Shaw, Richard; T McMasters; T Starline
Cc: Rodgers, Anthony; "Schommer, Robert"; Parcels, Breanne
Subject: Deemed No Vote

Council,

A proposal was made at the last meeting to look into deeming an absent council member as making a "no" vote on legislation. There is currently no provision in the Charter, Rules of Council, or ordinances that would currently allow such a practice. As such, in order to institute this practice some sort of council action would be required.

In review of the Charter, I do not find anything that would expressly prohibit council from adopting some sort of provision to have an absent council member be considered a "no vote". The Charter generally requires that passage of legislation have an affirmative "majority vote" which requires 5 votes from council (which would include the mayor if there were 4 yes votes and 4 no votes). Section 5.05 states that "The vote on the question of passage of each ordinance, resolution and motion shall be taken by a roll call of members" This suggests, but does not state, that a council member is to be present in order for a vote to count. Further, one could argue that the roll count vote requirement only counts for votes required for "passage" of an ordinance (need a roll count of 5 affirmative votes for passage). With respect to the Mayor voting, section 4.04 of the Charter provides that the Mayor "shall not have the right to vote on issues before Council except in the cases where the vote for the remaining members of Council results in a tie vote, in which cases the Mayor must cast the deciding vote." This provision does not necessarily shed light on a requirement that council members to be present in order for there to be a tie vote.

I point out that Section 4.14 of the Charter provides that council "shall adopt, by a majority vote of its members then holding office, its own Rules which shall not conflict with this Charter.... The Rules of Council shall provide for matters as the Council shall determine to be necessary for the proper functioning and government of the Council." This section seems to provide authority for such a provision.

I did not find anything in the Ohio Constitution or Ohio Revised code that expressly prohibited this type of practice.

Should such a provision be enacted, it would only come into effect if there were 4 yes votes. In other words, irrespective of the number of council members present or absent, (must be at least 5 present for a quorum) the "deemed no vote" would potentially change an outcome only if 4 members that are present vote yes. I say this because if 5 or more members present vote yes, it passes. If less than 4 member's present vote yes, it fails for want of having 5 affirmative votes. If 4 members present vote yes and the remaining council members present vote no, (assuming there is less than all member's present), then typically the matter fails for want of a majority, but with a "deemed no vote", this would automatically be deemed a 4-4 tie and the mayor would be the deciding vote where otherwise, he/she may not be able to vote.

If council did decide it wanted to enacted a "deemed no vote" provision care should be taken in drafting it to avoid unintended consequences. In a matter in which 4 council members are in favor of an issue and 4 council members are against the issue, the deciding vote of the Mayor is expressly called out in the Charter. As I understand the "deemed no vote" proposal, it is designed to prevent situations such as a matter that has a 4 to 3 vote from failing to be decided upon due to an absent council member or where $\frac{1}{2}$ of council wants to vote yes and $\frac{1}{2}$ wants to vote no, and the "yes voters" prevent the Mayor from casting the deciding vote based on the perception that the Mayor will vote against the proposal. By being absent for a vote, a "pro-yes" voting council member can be (in the words of the Mayor) a "super delegate vote". Curing this "super delegate" issue would be in the spirit of the Charter which allows the mayor to cast a deciding vote, but its applicability as being in the spirit of the Charter relies on assumptions as to what a vote will be.

Irrespective of the issue, deeming an absent voter as a no vote, can have some fairness issues. For example, if a no-voter on a particular issue is absent, his/her vote still counts as to that issue, but if a yes voter is absent, his/her vote is changed. Also, the deemed vote process can potentially be contrary to the spirit of the Charter. For example if 5 members are for a matter 3 are against it and the mayor is against it, if any one of the 5 council members that was for an action is absent (car accident, disability, weather delay, etc.), his/her "yes" vote would not be heard and a matter that would have likely passed if that council member was present, could fail with only 3 council members being against it (assuming the Mayor was also against it) due to the deemed no vote. Conceivably, if 7 council members are for passage of an issue, but the mayor and one other member are against it. In the unlikely event 3 members of council that are for the matter are absent (e.g. they fly to an event out of state and there is a weather delay such that they miss a meeting), the single no voting council member along with the mayor could determine an outcome with 3 deemed no votes.

I am not sure how to draft a "deemed no vote" that could address these issues and keep with the spirit of the charter, but if it is councils desire to do so, I believe that legally we could do so.

Gerald "Jerry" L. McDonald
Pickrel Schaeffer & Ebeling
40 N. Main Street
2700 Kettering Tower
Dayton, Ohio 45423
937-223-1130 (office)
937-223-0339 (fax)
937-641-2231 (direct dial)

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 _____, 2021;
_____ Yeas; _____ Nays.

Effective Date:

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date