

RECORD OF PROCEEDINGS

Minutes of

Council

Meeting

GRAPHIC VILLAGE - CINCINNATI, OH

Form 6101

Held

July 19, 2022

MINUTES
SPECIAL MEETING OF COUNCIL
JULY 19, 2022

Called to Order:

President Conway called the Village of West Jefferson Council Meeting to Order and asked for a Roll Call at 6:08 P.M.

Roll Call:

Council Members: Mike Conway, Linda Hall, Richard King, Jeff Patterson, Howard Wade, and Jennifer Warner.

Quorum Declare: 6 present, 1 absent.

Motion to Excuse Samantha Cahill, by Ms. Warner and seconded by Ms. L. Hall.

VOICED VOTE AFFIRMED

Motion Carries 6-0.

Also attending were: Josh Beasley, Law Director; Tom Hale, Director of Development; Jimmy John Hall, Clerk of Council; Ray Martin, Mayor.

Prayer: Mayor Martin.

Pledge of Allegiance: Mr. King.

The Agenda:

Motion to Adopt the Agenda moved by Mr. Patterson and seconded by Mr. Wade.

VOICED VOTE AFFIRMED

Motion Carries 6-0.

New Business:

Discuss Chapters 1117, 1126, and Public Hearings.

Mr. Hale began with a brief history review of Planned Districts and the PMU.

- *In 2015 we had some building issues. Mr. John Mitchel contacted to discuss potential services for the Village. Then, I was asked to put together the paper work for the Village to become a certified building department. The official start date for a certified building department was on January 1, 2016.*
- *Meanwhile there were zoning issues developing. In 2017 a Planned Mixed-Use District (PMU) was proposed by an attorney. That same attorney we do other business with to this day. In a meeting with the same attorney, there was a debate about how a PMU was written.*
- *The Village has four Planned Districts; Residential, Commerce, Mixed, and Unit. However, the Village has no Planned Residential District in the Village at this time. The most popular is the PCD, which is the industrial park west of town.*
- *In 2019 we determined to look at these texts and consider where there might be problems. One such issues involves the PMU text itself, then being referred to another chapter for its procedure. The other three Planned Districts do not follow that pattern to comply to Chapter 1107.*
- *Recently we have been given advice to do away with the PMU. However, I have not been able to process the packet given to me by our Law Associates. Also, my concern is how to regulate existing PMU's while eliminating them? On the other hand, how do we a line the texts.*
- *Why do developers pick PMU? Redwood Development is obvious because they have both residential and commercial on the property. So, Redwood doesn't fit a PRD – residential – or a PUD – unit – nor a PCD – commercial. It fits a PMU.*

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So, the PMU has become complicated but it appears there is some solution coming. Part of that solution includes a recommendation to re-write the PMU and a recommendation to eliminate the PMU.

Mr. Hale asked the Clerk if he has any comment or correction concerning the above.

Mr. J. Hall said I don't know if I have seen more information. I am usually the last person to receive the information or am at the tail end of an email chain.

Mr. Hale said my opinion about the PMU is to a line it with the other Planned Districts. Planned Districts are necessary and needed to control each party involved. If they are written correctly, they are good for everybody. In 2017 there was not the same oversight as there is currently. At present we have several opinions. However, I need one legal person to deal with. If we have to go to litigation, then we want one person representing.

Mr. King asked if it would make more sense to re-word the text? Some of the language needs to be cleaned up.

Mr. Hale said where there has been some trouble is with the process.

Mayor Martin concurred that all the information is not disseminated as it should be. For example, one copy says the passage requires the full membership of Council, while another copy says passage requires at least four members.

President Conway said I think if we have PMU already, we leave them, and correct the language.

Mr. Hale said we need to fix the language of Chapter 1117. What if a developer comes to us with a designation we have not used? We really don't know anything about a designation that has not been used. We need a process that goes to Planning Commission and then to Council for a final say so.

Mr. Beasley said the proposed change is to designate a property being annexed as A-1. Right now, when the property comes in, it has to be re-zoned or it retains its previous zoning. So, if it has a County or Township classification, it would keep the classification.

Mr. Hale said if the property is being annexed and has its previous classification, the developer cannot do what they want because they are not properly zoned. I do not agree with the A-1 or R-1 automatic. You can't put beans in a PMU!

Mr. Beasley said here is the potential legal problem is the act of districting is a legislative act but the act of approving the plans is not. If you reject the plans, then you could be sued. So, at the time of annexation, we should be setting the district classification but that is a problem. Its like the proverbial 'cart before the horse.' In other words, the classification is before any site plan. That, in sum, is the problem we are running into.

President Conway said, to me this makes sense, namely, that the zoning should take effect upon approval of final site plans.

Mr. Beasley said the advice I have given in the pass is to delay the actual adoption of the ordinance setting zoning classification until there is a plan.

Mr. Hale said can 1117 be amended?

Mr. Beasley said of course. It can be re-written how ever you want it.

Ms. Warner said are developers going to put together all those plans before its zoned and before they own it? For example, one development wanted zoned condos before spending the necessary money to do the drawings, etc.

Mr. Hale said the issue with that project was easier to address than the PMU, which has preliminary site plans, final site plans, and Council approvals.

Ms. L. Hall said what about Romo Raymo?

Mr. Hale said that was a different district and, so, a different text. Romo Raymo was PCD not PMU. The PMU is the problem.

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Mr. J. Hall said from the public point of view, they wonder how they are finding out about a development late in the process. They are asked to pay attention to the website. So, currently we have these steps: pre-annexation, municipal services, consenting, application, accepting, and then the final ordinance. What if we added a resolution with a conceptual plan and narrative in between pre-annexation and municipal services? Additionally, could we (Council) have a Public Hearing so that these concerns are up front and not at the end? This could also prevent us from getting along in the process and then turning it down.

Mr. Hale said the developers are not going to do that after a pre-annexation agreement. The reason why is found in their non-disclosure agreements. This would add another step. They need zoning to go out and market the land.

Mr. J. Hall said with the suggestion for a resolution of conceptual plan, developers are already doing that but not with a Public Hearing. For example, Redwood provided such a narrative about a year ago.

Mr. Hale said we know several months before something is known and the developers are sensitive about their non-disclosures. There is a time and place for public comment. We can't invite the public in every time somebody gets an idea. We have to establish texts that every developer has to follow.

Mayor Martin said a lot of times developers are just testing the market and local governments. When they get more serious, then they come to the Department of Development.

Mr. Beasley said we have to designate some zoning when land is annexed. If not, then the Village loses the ability to regulate.

President Conway said isn't the proposal to designate the land as A-1 or R-1?

Mr. Beasley said the legislative proposal to designate the land as A-1 or R-1, a default designation. One issue we have right now is we have un-zoned land in the Village because it was not zoned at the time of annexation. We want to fix that situation. We want to declare the land as A-1 and declare the prior use is a non-conforming use.

Mr. Hale asked if we can require a time limit after annexation for re-zone the parcel? Or, to clarify, 90 days to make an application?

Mr. Beasley said we can but we don't want to require this and then not act. We don't need to put a time limit.

Mr. Hale said I don't have an opinion about what we default to, as long as we have clear direction about what we are doing.

Mr. Beasley said this is meant to rectify the four Planned Districts. Those four were created at different times and, thus, different procedures. This recommendation is meant to make the four Planned Districts follow the same procedure to approve the plan. Then we will have one plan and procedure for the four Planned Districts.

Mr. Wade asked if our Charter gives any direction?

Mr. Beasley said there is not procedure to change an ordinance other than the ordinary procedure to pass an ordinance.

President Conway asked do we currently have any PRD's? Do we need one?

Mr. Hale said we have a district but nothing built. Since we do not have a PRD, I do not have enough knowledge to know if we need one or not. A PRD would be for a developer wanting to make 30-foot-wide streets, special lights, et al.

Mr. Beasley said this is how I conceptualize these districts. The 'Planned' portion is for creating a plan for a use. Then, the plan would include either residential, commerce, mixed, or unit uses. So, a PRD deviates from our ordinary ordinances but is deviates only residentially.

President Conway asked can we put a limit on a property that has not begun any work?

Mr. Hale said our Law director should give us some guidance on this.

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Mayor Martin said the problem with a certain property is they have not received all the approvals yet.

Mr. Hale said many communities have language that allows them to redact zoning if land is not developed.

Mr. J. Hall asked if this benefits the Village by having some accountability?

Mr. Beasley said placing time constraints are used to motivate a developer, yes.

President Conway said language can also be used to grant extensions.

Mayor Martin said we have done all this, we have our attorney here, we have good input from our Law Associates. Can we just have our Law Direct write the language the way we want it?

President Conway said that is what we want. We have reached our goal.

Mr. Hale said if we had all the same procedures and modify Chapter 1117, then we would solve the problem.

Mr. Beasley said I think this is part of the problem the Clerk of Council was trying to get at, the Planning Commission has a Public Hearing. Why do people miss that step? We are following the law. There was a Public Hearing early on in the process.

Mr. J. Hall asked if Council does away with Chapter 1117, how is the zoning classification set?

Mr. Hale said Council is amending Chapter 1117, and the zoning defaults to A-1.

Mr. J. Hall said my second concern is in regards to what others have said in these Chambers. One lawyer said the consent resolution is designed to make the process more difficult to get out of the process. Also, another person alleged that Council must have some other agenda to move this process along against public comment. But should more of these steps be done in the front end of the process rather than the end?

Mr. Beasley said you are familiar with administrative action and legislative action. There is a process that has to be followed to create a rule. When one is acting administratively, the procedure must be followed. When we amend the PMU, this process will be followed. Our process follows this procedure too; Planning Commission has a Public Hearing and Council has a Public Hearing.

Ms. Warner said those kinds of comments are typical. But we can have the best practice and in writing.

Mr. J. Hall said should the various clerks work together on making this information more publicly available?

Mr. Hale said each department has a set of rules. If the rules are followed, then each clerk is notifying the public per the law.

Mr. J. Hall said many of us go beyond what the Charter says. For example, we have a website, Facebook, and the Village App.

Mr. Hale said our office has forwarded information and its not getting placed anywhere. As long as we are following the law. We mail letters and people still tell us they did not receive it. We developed a relationship with the Post Master, and people still don't receive our letters. What else can we do? The new sign out front is helpful. We have to follow the law first, then do what we can after that.

Ms. Warner said at some point people need to be interested in their own Village.

Mr. J. Hall said I was not at all suggesting to ignore the administrative / legislative distinction nor was I suggesting to ignore the law. On the other hand, each kind of meeting requires a certain notification. For example, a Public Hearing requires a 30-day public notice in the newspaper and 20-day notice to the nearby residents. We post beyond that law. Regular Meetings of Council require three public places but Special Meetings of Council do not. However, posting is made in at least, if not more, three public places and I have been doing this since I started. We also post information on the website and the Village App although by the law we don't have to. Why do we do this? Recently I received a complaint that there is no place

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this person can find information about meetings. Either this person is not looking at the three public places and social media or we are failing. We are not failing. This is just a complaint. However, we are following the law and going beyond doing our due diligence for the Village.

President Conway said so moving forward, we understand what language we want in the recommendation. Can you (Josh) work on this?

Mr. Hale said this can be prioritized.

Mr. Beasley said I can have this by noon tomorrow.

President Conway said can we meet in August? Is that enough time?

Mr. Hale said what about Planning Commission? When can they see this?

President Conway said can we meet in between the August Regular Meetings and if it looks good, we can add it to our August 15th, meeting. This made me think about another issues. Every five years we have a Charter Review Commission. Should we have an Ordinance Review Commission too?

Mr. Hale said we have seen tremendous growth and need to add more hours to the London position. I would like an intern. We have to be careful with the various people we work with. For next year's budget I would like to get the cost into the budget.

Ms. Hall said does Kristie need more help?

Mr. Hale said I am grateful to have Kristie and Lenny is a blessing. Kristie is a dedicated employee.

President Conway said the zoning is a legislative act. The approving of the plans is an administrative act but Council approves those plans. How does that work?

Mr. Beasley said at that time Council is acting administratively. Legislative acts enact laws. The zoning map is, technically, a law. When a property is rezoned, the law is being changed. When the plan is approved, Council is enacting a law to implements the changes. For example, if Congress passes an act that says the EPA shall have such-and-such authority to regulate air emissions. That is all it says. Congress does not pass the rules to regulate the law, that's done administratively. When Council acts in this case, it is serving two legal functions.

Mr. J. Hall said consider two concentric circles that overlap slightly in the middle. The one circle is administration and the other is legislative. For example, the Mayor can act legislatively through a veto action ... that would be the overlapping point. So, the legal functions are not an absolute sphere unto itself but overlap for the purpose of checks and balances.

Mr. Beasley said when a plan is being approved, deviations are being approved.

Adjourn:

Motion to Adjourn at 7:59 P.M. moved by Mr. Patterson and seconded by Ms. Warner.

VOICED VOTE AFFIRMED

Motion Carries 6-0.

[Signature]

Jimmy John Hall
Clerk of Council

[Signature]

Mike Conway
President of Council

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