

## Village of Shawnee Hills Council Meeting Minutes

July 22, 2013

Mayor Monahan called the meeting to order at 7:00 p.m.

Council in attendance: Charlie Callender, Mahesh Dalvi, Kris Garren, James Gauldin, Dan Mathews and Mike McVan

Also Present: Administrator Ed Swanson, Solicitor Brian Zets and Fiscal Officer Shirley Roskoski

It was moved by Callender, seconded by Gauldin to approve the minutes from July 8, 2013 with the following amendments: on page 2 remove the words *stuff and part* and at the bottom of that page change Officer Barron to Sergeant Barron, on page 3 change the words *broken out into three phases* to *divided into three sections*. On page 5 change the word *out* to *our*. Following vote on the motion is recorded: yea, 6; Callender, Dalvi, Garren, Gauldin, Mathews and McVan. Nay, none. Chair declared the motion passed by a 6-0 vote.

It was moved by Dalvi, seconded by Callender to approve the agenda. Following vote on the motion is recorded: yea, 6; Callender, Dalvi, Garren, Gauldin, Mathews and McVan. Nay, none. Chair declared the motion passed by a 6-0 vote.

### **Solicitor**

Brian said that he worked with the Chief on a few questions. He continued to work on some of the zoning issues with respect to 9699 Dublin Road and that legislation is before you tonight. He said he will answer your questions now about that legislation or we can wait until the legislation is read and talk and if you have questions we can address them then.

Mayor Monahan said and that has a whole different process beside the three readings, we have to do a notification and different things.

Brian said yes and he had talked to Shirley, just to talk about that right now, it is the same as we have done for the other rezoning. Rezoning that has been initiated by the Council with that piece of legislation so it will have to have a first reading tonight, a second reading will have to be held off until the notifications have been advertised for two consecutive weeks in a newspaper, you have to have that within 30 days of a public hearing and you have to notify the contiguous property owners 20 days before the public hearing. He said once you get through tonight's reading we will have to do that advertising so you will not have that second reading in two weeks, you have to push that second reading to coincide with the public hearing so that you can do it all at one time.

Brian said he is still working on the garage and shed ordinance. It is going to require additional definitions and the regulations that go with the sheds and garages. He should have that for the next Council meeting.

Council member Dalvi said we talked about the sheds at the last meeting where the houses are kind of odd in the way they are positioned like the one on Mohawk right here. He asked as part of the stuff that you are doing are you looking at that or is that going to be looked at. He said the house is right in the middle between two roads and all the other houses have their fronts facing

one road. Mayor Monahan said in reality, years ago we should have dealt with that, before we were we, but essentially because we do have houses in different directions. The other thing, and he thinks it is still applicable, is that it can't be forward of the front of the house because even in that case if the front of your house is facing that way you still could place a shed here. Does it cause a problem because the back of your shed could be near the front of someone's house and that is why we might want to look at the setback not being right on the property line.

Brian said maybe we can address that with the setbacks he does not know if we can address that in particular just because that is a fairly unique situation.

Council member Callender said the front of his house faces a back yard and there was an old brown shed there and luckily a tree and bush grew up so we don't see it anymore so you might want to consider some kind of soft vegetation to cover the shed.

### **Village Administrator**

Ed said that the street paving starts August 12<sup>th</sup> and the sidewalk rebid opening is August 14<sup>th</sup>. Council member Dalvi told Ed that the dirt is eroding over the storm water pipes on E. Pawnee in front of his house and towards the end. Mayor Monahan said this is going to be a pointed question, is that up to the homeowner to cover up that dirt. Council member Dalvi said I don't know, just tell me what to do. Ed said he would check it out.

Council member Dalvi said the edge of the road is also corroding.

Council member Callender asked Ed how the tree trimming was going. Ed said he got everything worked out, a pretty good compromise. It will be a couple of months before they come back to finish up here.

### **Communications**

Mayor Monahan gave the following report:

From: Brandon Wolfe

Sent: Monday, July 15, 2013

To: pat.monahan@shawneehillsoh.org; Mark Katzenbach; ed.swanson@shawneehillsoh.org; cedarbrookgc@yahoo.com

Subject: Eagle Scout

Thank you all for all of your help and cooperation throughout my eagle project. Without you I wouldn't be able to say that as of 7/10/13 I am an Eagle Scout.

Thanks again, Brandon Wolfe

Communications from ODOT about intersection of 750 (Powell Rd) and Rt 315

New Turn Lanes Coming Soon to SR 315 & 750 Intersection

ODOT going door-to-door

Delaware (Friday, July 19, 2013) – (NEW) The Ohio Department of Transportation (ODOT) says a construction project that will add left turn lanes on State Routes 315 and 750 in Delaware County could begin in a month. Once the contractor for the \$4.2 million project is awarded, ODOT will provide specific information on traffic impacts.

Because this intersection is heavily travelled, ODOT went door-to-door today to let businesses in the area know about the upcoming construction. ODOT is also coordinating and communicating with local municipalities, emergency responders and Delaware County.

In order to build the new turn lanes, SR 315 is permitted to close for 60 days at SR 750. The detour will be US 23. The new turn lanes on SR 315 must be completed by November of this year.

The contractor is not permitted to close SR 315 & 750 at the same time.

Next year, the contractor will build the new turn lanes on SR 750. Only the west side of SR 750 is permitted to close and for no more than 45 days. The detour is SR 315 to US 23 to US 42 to SR 257 or reverse.

Recent traffic counts from 2012 show a little more than 9,500 vehicles travel this section of SR 315 in Delaware County each day and close to 14,000 vehicles use SR 750.

The Chief notified us that Jessica Redd who has now graduated from the Police Academy and is now Officer Redd! Congratulations Jessica!

### **Mayor's Report**

Mayor Monahan gave the following report:

Did everyone get the RITA TOP 25 Report from July 11th

From: Pat Monahan [mailto:pmonahan@columbus.rr.com]

Sent: Sunday, July 14, 2013 11:23 AM

To: 'Bob Fathman'

Cc: 'Ed Swanson'

Subject: Intersection

How are you Sir?

Over the past couple of months we have had 2 mtgs. on the 745 and Glick Rd intersection. I was disturbed and need your help when Dublin pulled back from a \$1.5 M commitment to a significantly lesser amount. In the Mayor's Report of June 24th I attempted to spell it out. I have copied it below:

Bob after looking this over let me know what would be a good time to talk or meet. I find it ironic that Dublin is willing to invest in circles everywhere (we don't want one here and it wouldn't fit) and have backed off the prior commitment. As I stated below I believe that 10 % of the traffic traversing the intersection is Shawnee Hills Residents, 70 % is Muirfield / Dublin and the remaining 20 % is Delaware County other.

Your help in encouraging Dublin to invest in the future of our communities is greatly appreciated!

Thanks Bob!

Pat

I have also emailed Delaware County Commissioner Gary Merrill and let Commissioner Merrill know I would like to talk with the Commissioners asking for a larger financial investment from Delaware County in the intersection improvement in light of Dublin's stepping back from their original commitment.

Planning and Zoning is meeting on Tuesday July 23 rd.

Planning and Zoning Agenda -July 23, 2013

1. Update on shed legislation.
2. Update on zone change of lot at the end of Buckeye to Residential from Neighborhood Commercial.

3. Proposal for new playground equipment- Dave Probst  
-can we start to assemble the project?  
Design
  - . Cost estimates to Finance for future budgeting
  - . Committee and project plan including removal and addition of new
  - . Obtain tree, plaque and bench estimates to advertise to the residents

Something I brought up at the last meeting, when Service meets can you look at a proposal to cap engineering costs at 15% of the overall project? Thanks!

Please remind everyone that the Village picnic is Sept 15<sup>th</sup> at the Ohio Wildlife Center. We did have a Picnic Committee mtg. on the 11th of July.

### **Committee Reports**

Council member Dalvi said that Finance did not meet.

Council member Callender said that Utilities did meet but did not have any new issues to talk about.

### **Legislative Actions**

First Reading- Resolution 14-2013- A Resolution to increase the rate of pay for Ed Swanson, Village Administrator for the Village of Shawnee Hills. Mayor Monahan said that this is a two percent increase, it's spelled out in the legislation and he has received his evaluation.

First Reading- Ordinance 18-2013 – Sponsored by Planning and Zoning – An Ordinance to amend the zoning district map of the Village of Shawnee Hills, Delaware County, Ohio by rezoning 9699 Dublin Road from Neighborhood Commercial to the R-2 Single Family District.

Mayor Monahan pointed out the location of this property on the map and said when we do have the public hearing Dave Kerscher will come and talk about that. One of his biggest issues is the fact is he doubts that he will sell that for ten years as that and he wants to sell it. He is an interesting man, I found out he is a stay at home dad and his wife is a chemical engineer, nice folks.

Council member McVan said I have one question in regards to that. When he developed this why was it zoned commercial, did he request that. Mayor Monahan said his father-in-law did.

His father-in-law who passed away, Roger Yeoman, he was the one who requested that. Mayor Monahan said if you take a look down below there the Concord Township area it is zoned farm residential. Across the street from it is zoned neighborhood commercial.

Council member McVan asked where does the owner live? Mayor Monahan said down at the end of Buckeye Drive and he does not want to see the commercial property there. They inherited the property and like he said, he asked when do you think it will sell. Mayor Monahan said what amazes him is that the property where we have the tree lighting is probably the most prime lot we have and it has not sold yet.

Council member Callender asked if there were houses right up on Dublin Road in the residential section. Mayor Monahan said right across the street is the property that Steve Smith had for sale

for a while and they anticipate, he talked to Steve not too long ago, as you know, the most likely thing when you go into getting people to come into the village is contiguous land because it doesn't really cost us because we are not putting in new sewer lines as opposed to if you try to run the lines down Mohican and Logan there is quite a cost associated with putting in the lines.

Council member Gauldin said I have a question that I would like to get out there because I'm sure the three readings will go on when we have the discussion or we may depending on what happens. This took a little bit different path to get to rezoning than normally so in that I am questioning what kind of fees are associated with this at this point, is this our standard fees.

Brian said there are no fees, this is not a land owner initiated zoning.

Council member Gauldin asked who initiated the zoning. Brian said you are with this piece of legislation, I say you meaning Council.

Mayor Monahan said let me give you a horse ride on that. Dave caught Mark working down there and said you know what I would really like to do, I would like to provide a buffer there and I would like to get this rezoned to residential. Dave came down and talked to me and I got with Brian and I don't know how many emails but it certainly was many and we said there are two different paths to take, he can file through and do all the necessary things there, again or we can just do it this way and that is why he took it to Planning and Zoning and explained it to Planning and Zoning. Again it is not unlike some of the other cases we have where you say if you want to sell that what do you have to do to go from here to there so we do have one of the two options in front of you that Brian recommended that this come through Council and do it.

Brian said just for the record he did not recommend this.

Mayor Monahan said it was one of the options.

Council member Dalvi said let me ask this question, did the owner come to the planning and zoning meeting. Council member Mathews said no. Council member Dalvi said so the owner didn't come to the planning and zoning meeting. Mayor Monahan said we did not ask him to come. Council member Dalvi said so if I own a piece of property and I want to do anything with it, the process is the owner comes and presents the case to the planning and zoning commission. Here the owner is absent and we are trying to do it on his behalf, he just does not think it is the right precedent that we are setting for the Village.

Mayor Monahan said let me ask you this, first of all show me where they are supposed to come to planning and zoning. Council member Dalvi said all I am asking is that if the owner lives on Buckeye Drive, he should come. Mayor Monahan said he should have invited him. Council member Dalvi said the question has been asked and it becomes a process, he came, he presented, you guys reviewed it, it just follows the process. He said he thinks this is the right thing to do but let's just follow the process. Mayor Monahan said we did. Council member Dalvi said this says the Council is presenting and the Council doesn't know about it, I don't know if you, the Mayor, can say you are presenting this case. I just think that the owner should come and present the case and follow the process.

Mayor Monahan said he will take the hit on him not being there, there is no process and if you want to establish one, when we went back to Brian and said what are the routes that can be taken and so effectively I said I have no problem if planning and zoning wants to co-sponsor with this

and do this so that is why I brought it in. I did not ask him to come to the meeting. If the question came up to ask him I would have asked him.

Council member McVan said normally it is initiated by the property owner. Almost anywhere you live it is initiated by the property owner.

Mayor Monahan asked Brian what are the steps if it is initiated by the property owner, can you walk Council through that.

Brian said that the planning commission would have to have a public hearing. It is almost the same process but not exactly because if take a look, the application comes in, then the Mayor forwards the application to me, I prepare the legislation, then the planning commission schedules a public hearing date and then they make a recommendation to Council, then Council hears the legislation and then depending on what the planning commission recommendation was, it depends on how the vote has to go.

Council member Dalvi said so that is a documented process. Brian said yes, it is in 1129.03.

Council member Dalvi said so when you say there is no process that is the documented process.

Mayor Monahan said that was one way to go, through that, but as far as going this route there wasn't, so when you quote a process and believe me there was about twenty five emails on this and that is why I think we read through it and if it needed to be somewhere different I didn't realize it and I should have done it. Council member Dalvi said the fees probably would apply anyway if it came through the documented process. Council member Gauldin said that is his understanding from what Brian is reading here, if he went through that other process. Brian said whatever those fees are to rezone and I do not have those fees right here. They went to the planning commission and if you read the legislation I worded it very carefully, I outlined how it was annexed and when it was rezoned, it was annexed in 99 and came in as R2 and was rezoned in 2001 and was put in the TIF and that is where it is today. There is a process, if it is initiated by the homeowner and it goes to the planning commission, they make a recommendation to Council. The code says by Council or initiated by ordinance. The planning commission talked about it I guess, but they really don't make a real recommendation that has to deal with this, I mean this is a Council initiation.

Council member Gauldin said wasn't there a recommendation from planning and zoning. Brian said there might have been but officially there is not.

Council member Dalvi said let me put a scenario right now, you guys went through this stuff and now Mr. Kerschmer comes and says hey that's not what I asked for, it is his property, he could easily come back to us and say I did not ask for that, what is our answer. Mayor Monahan said which one of the twenty five emails do you want. He agreed that this is how he wanted to proceed. Council member Dalvi said part of what we are trying to do is, there have been six or seven questions asked on this one. I think the only thing is if the owner just initiates the process, whatever that process you said, we would not be having all these questions. That is all he is saying.

Mayor Monahan said he did initiate the process, let me try one more time, if somebody did not invite him to the planning and zoning meeting, that's on me. He had two different ways to go with this and at the time he said, look it is probably easier to just do it this way rather than the other based on the timing aspect of it. He has a for sale sign up right now.

Council member Dalvi said if he wants to rezone the property let him initiate the process, which he is assuming that all he has to do is come to the next meeting and say this is what I want to do. Shirley said no, there is an application that needs to be completed and a fee to pay.

Council member Dalvi said so there is something, so there is an application form and a fee to be paid so that is all he has to do.

Brian said he initiated it when he talked to the Mayor, but he didn't initiate it under the statute because when you initiate it, you initiate by application.

Council member Dalvi said if the process says initiate by application then that is what you should do.

Brian said but you can do either, you can initiate it by an application or it can be initiated by Council.

Council member Gauldin asked what is the difference. He said if you don't pass this it is not initiated by Council right?

Council member Dalvi said it doesn't say initiated by the Council. Brian said the legislation does. Council member Dalvi said it says sponsored by planning and zoning. Brian said if you read the words it clearly says it is initiated by Council because it quotes the section. Council member Dalvi said so coming back to the question, I know there are two options, but the preferred option is he fills out the application form; he pays the fees and goes through the process. Is that not right. Brian said he does not know if you call it the default, there are two avenues you can take, council initiated or owner initiated.

Mayor Monahan said in this case the question was, and I have never done this before, what are the avenues and there were two avenues to do this. One thing I think is being missed here is the one thing the Kersher's want to do is to retain the buffer, that they are willing to put it in there so you are not looking at the stark land when you are coming into the village. I am feeling like you are distrusting this.

Council member Dalvi said I am not distrusting this, I am just saying that there is a process that we have that says fill out this application and pay the fee, that is all I am asking.

Mayor Monahan said that is one and the question of Brian was, Dave asked what are the alternatives to this.

Council member McVan asked Shirley if they come and fill out the application and pay the fee, is the fee nonrefundable whether it is passed or not passed. Shirley said correct. He said he is just curious, that could alter a decision, that is why he is asking. Shirley said we do not refund the fee. Council member Mathews said if they come and pay the fee it doesn't go to Council. Brian said eventually it will. Shirley said it goes to planning and zoning, there are public hearings, kind of the same process. Brian said and then it comes to Council.

Council member Dalvi said so it is a formal process where an application is completed, just like where I want to remove a tree, I don't send an email to the Mayor and say I want to cut a tree, I fill out an application form and someone comes and says okay you can cut the tree.

Council member Garren said so can we have the owner fill out an application. Brian said if you wish him to, you can do whatever you want to do.

Council member Gauldin said if I may and I don't mean to step on Mike, what I wanted to better understand was, there is a fee to do this in one direction but there is not in another so I wanted to understand why we charge the fee, what kind of costs we are incurring and how that change is taking place to understand if this is one of the options we want to take. Brian said he will just

guess that we charge the fee because when you file the application there is a bunch of information that is submitted with the application and he assumes the fee is so that Mark, Ed and I can look at the application, we could do everything we need do, then send it to planning and zoning so there is more involved I guess. Shirley said when someone completes an application they supply the names, they supply the address labels for us to send the notices out to the adjoining property owners, the solicitor always reviews these, always prepares the ordinance. Brian said by code he has to prepare the ordinance. Council member Callender said so the village incurs some kind of cost so that is what the fee is covering. Brian said I would assume that's exactly what it covers.

Council member Dalvi said so let's say we follow this process, does he still have to pay the fee. Brian said no.

Mayor Monahan said so let's go back to the original question. The original question was what are the ways this can be done. One is the fee; the other was to come this route. We have been emailing back and forth for about a month and a half and got to this point. If Council says they want him to pay the fee I will go back to him and tell him to do it that way. Council member Dalvi said he thinks fundamentally there is an issue, from what he knows, if there is something to be done, there cannot be a process where one way of doing this there is a fee and one way there is not a fee. Council member Callender said but we have that right now in our ordinance right? Council member Dalvi said he does not know how many processes have that because to him he does not know why that should be the case.

Brian said if there was a rezoning with some development project or something and there were other things being done or fees being paid he could see where Council could say we want to initiate the rezoning. He said he thinks Council actually initiated a rezoning of another parcel at some point in the last few years. Council member Callender said for benefit of the village. Council member Garren said but Council didn't actually initiate this. Council member Dalvi said that is what he is saying; the Council did not initiate this. Council member Gauldin said I think one of the reasons the fee is structured like it is, because I did read on this to try to understand it, and I think it is based that if Council does something, for example, they have a business district that they have been trying to lay out through here, now where it ends or where it doesn't that's not part of what this logic is based on, it may be a very good thing to continue on this path with what they got but I think the fee is Council and the Administration or Council or State comes forward and says this property is now this zoning the next time it changes hands. They put something into place that governs this zone. I can see the property owner going okay I don't mind that change but I don't want to pay the extra fee to have it rezoned when you have already voted it in to be rezoned and I think that might be why the ordinance is built that way. If the property owner were to come forward and say I want to make this a light industrial or some other piece of property than that fee falls upon them and then if Council were to come through it might be thought of as a sweeping measure and you don't want everyone to pay the fee, that may be why it is in there, I don't know. My question was to understand why it was in there and to make sure that we are covering administrative costs at least and not get on a slippery slope of when we do and when we don't.

Council member Garren asked who benefits from the rezoning. Council member McVan said the property owner. Mayor Monahan said the Village does too in one sense. Now if you played out

the economics and say if it sold at the same time. That is the question, if it is sold, it is alarming how low of a percentage we get for residential property taxes, it is 2.5%.

Mayor Monahan said the only thing I would ask, if we want to do this, first of all the statement was how did we go about this and this took a lot of things on his part to go and do initially. So we gave him choice A or choice B, which way do you want to go. If there is no choice B I would like our code to read that there isn't. Other than the fact it was just a matter of Brian what ways are there to go and this is where it was and the benefit, if you go up there and you look at the fact that the property owner could say I don't give a damn about giving them a buffer, I don't give a damn what it looks like, but he did and that added to the whole story.

Council member McVan said one more question, he wants to do that for a buffer, he wants to leave the buffer basically. So he could do that either way no matter what it is zoned if he owns the property. Brian said the buffer is the build line. This isn't a preservation zone, it's not a no build zone, it's the build line on Dublin Road and I said that in an email, that is just one thing that everyone should be aware of. That build line could be varied; it's the same as the build line on your street. If you decide you want your porch to be closer than 30 feet, if it is 30 feet, you could have that so your house sits at thirty and your porch sits at twenty five. That buffer, if you will, is the build line, just so we are clear.

Council member Dalvi said so when someone fills out an application form don't they provide all the details. Brian said he did provide the subdivision plat, that's why I know it's a 30 foot build line and there is a sewer easement.

Council member Dalvi said so those are the kind of things that would normally get attached to an application form for review. Brian said yes there are lots of stuff.

Mayor Monahan said again, if you want it to be only one route than please tighten the legislation and I have no problem going back to Dave and saying Dave you have to file this now. I don't have any problem.

Council member Gauldin said I just wanted to make sure I understand why the fee was there and it sounds like there is a lot of behind the scenes work and I have heard some of the behind the scenes work and that all has to balance out. It's a point of discussion, it's not for or against because ultimately when we do things, recently we allowed a gas line to go through without the right of way fee and there are so many discussions that could take place on that and I think ultimately we did the right thing. I felt my vote was in the right direction. I want to make sure that we don't, again, get on that slippery slope where we start doing this thing where, oh well, this is the route that has to be taken and that falls to Pat's point which is okay if there are two routes which way do you go and how do you do it. So that is why I bought it up and I wanted to better understand it, we have two more readings to go on this and we can think about it and figure it out.

Mayor Monahan said the only thing I would say to that is if you guys want me to go back to him and say file the papers. I bought it through planning and zoning so at least the zoning commission would look at it, there was a motion passed that they are in favor of this as well as the sheds, that was part of the planning and zoning minutes. If you want it to go back, rather than hold it, one of the reasons we did the thing on the gas line, was because the guy was building the house, he was ready to connect, he was ready to go. This is a timing issue, if you want him to file

this thing the other way than let's tell him now and I will go do it, because I am okay with that. I just don't want to wait three months then come back and say it needs to be done.

Council member Gauldin said let's think about that so that if it continues to be a discussion point we can ferret it all out.

Brian said he does not want to rush your discussions and your thinking but think of how this legislation is going through. Your second reading is going to be the public hearing, if you say we are going through the process Shirley is going to get all the notifications out, you are going to advertise it for two consecutive weeks, and the next reading will be the public hearing so you will have already gone that much further down the road so you might want to take a few minutes right now and figure out which way you want to go.

Mayor Monahan said if there is only one way I would like to have that. If you table it because you want him to go through it the other way I would rather tell him today. We need to tell him exactly what that means.

Council member Dalvi said if there is a documented process, I know there are two ways, if there is a process that has an application and has been done before than my view is let's follow that process.

Mayor Monahan said is that a tabling of this and going back to him and saying that Council feels that he has to follow that process.

Brian said you can probably table this even though you have read it once. I think you can probably move to table it. It will be tabled indefinitely because it will come back as a brand new piece of legislation after the application is completed. The Mayor will notify me officially then I can rework the legislation, then it is off to planning commission for their review, their public hearing, then back to Council so you can table it now or just table it at the next meeting before you actually read it.

Mayor Monahan said I would rather not wait. Brian said you can do a motion and table it right now.

Council member Dalvi asked do we even have an application form for this. Shirley said yes.

Council member Garren asked if tabling it is the only option for this piece of legislation. Brian said yes, it is the easier, cleaner way.

Mayor Monahan said in fairness to him, the one thing I think is always interesting is when you say and I will go back to the lots by the three story and somebody wanted to sell it, I didn't get it until I realized that we were putting the original house in non-compliance. Because it seems to be sometimes we ought to be able to move to accommodate somebody to sell something. When I finally got the idea, then it made sense. There is a lot about this code and a lot of times I just ask Brian because I don't know what are our possibilities and that is where this one started out so I rather, for Dave's sake, timing wise, so say if you want to do that, here are the forms, go pick them up and fill them out.

Council member Mathews said can we actually notify him to fill out the formal application, pay the fee, and read this because it has already gone to planning and zoning.

Brian said the planning commission will now have to have a public hearing; they now have to provide notice.

Council member Garren said this says initiated by Council and just by initiating it by the property owner I think changes the intent of the legislation.

Mayor Monahan said I would ask two things, if Council wants to do that, that's fine, let's act on it in fairness to timing, do that, but I would also ask that we tighten down the language to make sure there is a clear path.

Council member McVan said I have a point on that and like you said Jim there might be a reason it is put in there and when you say it can come from Council can't we just simply say okay you come and ask Council to initiate it, just say no, go fill out the paperwork so that way you still have your loophole but yet we are not liable at that point.

Shirley said I am going to say what my interpretation of that is: one says initiated by the property owner. They fill out the application, they pay their fee, it is initiated by the property owner. The other one says initiated by Council and that is when you are actually planning, you are looking at your code and planning and zoning or Council says we want to change our zoning districts, we want a business district here or a multi family here and that is where it is initiated by Council or planning and zoning. That's my take on it.

Brian said it says Council may change or amend the text of the code or the zoning district. Mayor Monahan said there was a motion of planning and zoning to do that and the only thing I would like to do is make sure we seriously look at that because a lot of time has been invested and I just want to make sure that if he has to file this lets have the paperwork ready for him tomorrow.

Council member Dalvi said I think from a documentation process, I know we have emails, but there is an application form and eventually that is something we will need for our records for whatever happens down the road.

Council member Mathews said planning and zoning co-sponsored taking this from commercial to residential. It was already in that process and we said yes we agreed with that by motion. Council member Dalvi said so the process of planning and zoning, it's just not the ordinance itself that needs to be changed, the intake process will have to be reviewed, because obviously he did not come so there was nothing to initiate it rather than someone saying something, correct.

Mayor Monahan said, but again, he came to us, so at that point in time, I said I would take it to planning and zoning. I don't know, in your scenario, if it had been Dave sitting in front of planning and zoning.

Council member Dalvi said there would have been a different case because normally what would have happened planning and zoning would have had an application form, correct, to review that and take action on it. Mayor Monahan said so our legislation should say that they must start with an application, is that true, whether it is council or any way you go, if that's the case then the question is you pay your \$1,250.00.

Council members McVan and Dalvi said no. Council member Dalvi said there are two different levels correct, sometimes there could be a big business district kind of legislation which the question is who is going to fill out the application form so there are situations where if it is not an individual property owner initiated thing or if it's a case where multiple property owners are involved then in those cases it makes sense because it is not one persons property, who is going to fill out the application form. Council cannot fill out their own application form so the point I am saying is I don't think we can say everything has to start with an application form, we have to

put some guidelines as to what that is and what other situations where Council initiates it or the planning commission initiates it.

Council member McVan said I think the way it is written is good, it's just saying the property owner needs to come forward and fill out an application whereas in special situations Council has the power to do something that they need to do.

Council member Dalvi said the only difference here; this did not feel like a special situation because of an individual property owner.

Council member Mathews said because he has the means to fill out an application.

Council member Dalvi said because he is an individual property owner. Just like any other property owner, if I wanted to cut down my tree I fill out a form and he is an individual property owner, he is the only owner and the due process is he fills out the application form.

Mayor Monahan said again, maybe there is something that would do that if it's an individual residential owner and it requires an application. I understand wanting to retain the right of Council, my problem is, and you know Kathy Isern came to us one time when we were wanting to close E. Osage Dr. and at the time, she said you know, the trouble is if you guys make this decision you will all be gone and someone will say I wonder why they did that and that is why he came up with the book of decisions. What I would like to avoid is the time, money and talent avoided in that avenue of and you can't believe some of the things people ask, can I do this, no, so we followed that path, went to planning and zoning, did that. I would like to maybe try to get some definition; I understand when you are talking about a corporation wanting to put a four story building here and we want to make a decision, I get that, but as far as closing a loophole that an individual could do and they have to go get something, I get that too, but the only thing I want to do is make sure that he knows what he has to do.

Council member Dalvi said we want to do the right thing, I don't think that anyone disagrees with the decision, that's probably the right thing to do.

Council member McVan said so we just need to table it tonight.

Council member Gauldin said we need to decide if we need a motion to send it back and have him do it differently because if you table it tonight then more time and money passes.

Brian said you have to table it. If you do not want to keep reading this ordinance you have to table it.

Council member Garren said so our choice is to table it and have him submit an application or let it go forward.

Council member Callender asked if this would cost the village more money by going that route.

Brian said he will have to draft a new ordinance. Council member McVan said they have to pay the fee to help compensate that.

Council member Dalvi said the property owner is not planning on doing anything to the property is he.

Mayor Monahan said he has a for sale sign on it which most people don't realize to a point that was asked most people with real estate don't realize that they have to go through these things, that's why he came to us, even before the for sale sign he came to us, we have been working on this for probably two and a half months, at least twenty five emails and that is why I said I wanted to go before planning and zoning. The only thing I would like to do is to make sure that ten years from now somebody doesn't follow the same road and find out it's a dead end.

Council member Dalvi said that is why the best thing is to start with what the process is and the process was, that's where the guidance needs to come, the individual property owner versus... Council member Gauldin said ultimately we have to figure that out.

Council member Garren asked Brian if we could somehow amend this document so that it is sponsored by planning and zoning and the Mayor versus initiating a new one. Mayor Monahan said it is supposed to read sponsored by myself and planning and zoning. Council member Garren said I would feel more comfortable with; it shows where the initiation comes from. Council member McVan said it doesn't really matter at this point, you have to table it or you have to let it go, that's it.

Brian said correct. Don't interchange that initiation by Council in the fact that he did initiate it in theory because he brought the issue up but technically Council is initiating the rezoning, legally speaking, Council is initiating that with this piece of legislation.

Council member Mathews said either way, right, because it is somewhat irrelevant who initiates it because we have to ultimately make the decision.

Mayor Monahan said I will make you a bet, something that Charlie had brought up here, is that we probably spent some money going back and forth and at some point in time we need to tell somebody nope, you have to do this, that would be good if legislation did it, but I bet you we will spend more money than we will collect on the fee in this case to get through this.

Council member Callender said the way I see it is that we have two procedures, one is the way he came through it and the other is filling out the application, paying the fee. What I'm hearing from some council members is we want to do away with one of the procedures and just have one. Council member Dalvi said no I am not saying that, I think both should be there, the thing is we need to put more definition as to what process to follow for each one of those things.

Council member Callender said but for this particular ordinance, the eggs already hatched, we can't change that right now. Down the road we can change the ordinance for that purpose but we are looking at this. When I was listening I was really for, he needs to fill out an application and stuff, but after listening, my personal opinion is we should just move forward with this ordinance.

Council member Dalvi said the question is, here's my view, because I don't want the person to go through this if it is going to delay the process but I do think, the thing that I want to make sure happens, or at least recommend is him to, so let me ask you this. If he goes through the process and still pays the fee is that okay.

Brian said no.

Council member McVan said we are already past that.

Mayor Monahan said he followed the law and it would be like retroactively asking that shed person to take down three of their sheds because they have five. He followed the law and to Charlie's point, now the question is, should we tighten that up going forward.

Council member McVan said you were being generous I think, out of the kindness of your heart, I think you were at the right direction but couldn't you simply have said go fill out the paperwork. Mayor Monahan said if that's what the law reads and I know that, which I don't always know, and that is why I asked Brian and had Brian said oh hell no you have to do this, then I would have done it, but we were saying how would somebody do this, you know, and he was originally willing to donate that piece of land to us and we said maybe that doesn't make any sense either. I would contend that this has gone down a legal process but we now want to tighten

it and going forward I will tell you right now I'd rather you say fill out an application even if the application comes to Council and we have a different route that says what you were talking about, a corporate thing, I don't have any problem with that.

Council member Dalvi said what he is realizing with this discussion there needs to be some tightening of the process. Mayor Monahan said moving forward. Council member Dalvi said his view is that there is no point to take this through again, for two reasons, one is planning and zoning will have to do the same thing again, correct, you are not going to change anything and you are not going to change anything Brian are you, your analysis will be the same. Brian said he does not provide an analysis of the rezoning; all he does is prepare the legislation.

Council member Callender said what you are saying is that we will be back at the same point where we are at right now.

Council member Dalvi said correct point one, but at least the thing we did was to discuss it, we know there is a process gap, we need to fix it and that is the right thing to do.

Brian said there is not a process gap, I don't want to disagree, but there is not a process gap, like Shirley said, Council can initiate zoning when you want to initiate them, if you don't want to initiate them just tell everybody else go fill out an application, get in all the information that you need, the plat, all that stuff and take it back and file it. In my opinion the legislation 1129.03 doesn't need changed. If Council doesn't want to do it on their own initiation send him off to planning.

Mayor Monahan said but again, this has followed what is allowed in our law now. The difference may be, what we want to do is, maybe it hits planning and zoning and they say I think this is something that requires something else, but to the point Charlie made, I think we will just be backing up just to come back here in x amount of time to do this. I don't know what we have accomplished with this, if we want it different going forward then we need to take a look at how we do this.

Shirley said I am sorry, I can't sit here and be quiet any more, he came in and talked to Mark and Mark went through this whole process, he had to fill out the application, he may even have the application in his hand, I don't know, he didn't do that and then he went and talked to Pat instead. Pat said well no, he came in to talk to Mark after, he talked to Mark first and Mark says go talk to me. I took the question and I shot it to Brian, do you not believe that is that what you are trying to say. Shirley said Mark told me, and I'm sorry I was not there, but Mark said he came in and Mark went through what the process was, he explained it to him, what happened after that I don't know.

Mayor Monahan said and before that what I told him to do is, one, I shot the question to Brian, then I said please go in and talk to Ed and Mark and go through what it says in the books to do that and you determine which direction you want to go because there were two directions.

Shirley said we would never say not fill out an application, Mark or I or Ed would never say you don't fill out an application. Council may have that opportunity but not here in the office.

Council member Callender said when you told him he had to fill out an application did he ask what the fee was. Shirley said I was not there but Mark would have told him what the fee was and I think it is on the application.

Council member McVan said realistically there are not two ways to go through it. The one way is for Council, the other way is for everybody else. There really is not two avenues.

Brian said someone could come to a council person and say hey, could you initiate some legislation and you could say no or move forward. Council member Dalvi said but Council did not take this to planning and zoning so he wants to make sure that Council did initiate the

process and told him to go to the planning and zoning. Did anyone on this Council make that decision to take it to planning and zoning. Mayor Monahan said Council member Mathews is on planning and zoning. Council member Mathews said he is but he did not initiate this. Mayor Monahan said let me ask you this, if you want to split that hair, who do you want on Council for me to send them to when you have this question going forward. Send them to Jim. Council member Dalvi said the Pro Tem, that's what his role is. Mayor Monahan said so my question going forward is do you want to stop this one now and tell him to go fill out an application, because he did come and talk to Mark after I told him to go in. Since we are dissecting this, there is another thing when you say what he has to do from his attorney standpoint to go get this, that and that. There were two routes and we said which one do you want to go down and he said I would rather go down this one it's easier so that's why I took it to planning and zoning. We had the discussion and planning and zoning passed a motion, if you want to stop it tonight and have him fill out the thing then do that, but I will contend that there are two ways to do this. If you think everything has to be initiated by Council then one of the committees Council has is planning and zoning, the Boards.

Council member Dalvi said that is a decision, how it gets initiated, again a process discussion. He could very well fast track this process, say if he sends the request to you, the Pro Tem, and that's a possibility and to prevent all these things, if you don't want him to go through the application process then Jim as the Pro Tem could make that decision. Pro Tem Gauldin said he wants to make sure that that is the rule for the Pro Tem, not for me, in the future also and he is not against that process. He hates to try to play devil's advocate but by the same token if two possible avenues were given and anybody read them both it would be crazy not to try this method and ask if this was available so I don't think this is wrong, ultimately, the reason I brought this up was trying to understand this. Right now if Council says the fee is no big deal then I think you have answered the question of this, if for some reason Council doesn't think this is a proper method to go we could just turn this down because that is part of the process. The only other thing to turning this down is if you are going to turn it down they are saying can you do something tonight so this doesn't drag on so I think that is kind of where we are at. Council member Callender said where we are at is if somebody on council wants to make a motion to table this, this is where we are at and then we would vote on whether we table it or not, that's where we are at. That's the bottom line.

Council member Garren said I think my concern, more than the fee, is that it says it was initiated by Council, but there is not a clear understanding for what purpose and the Council members here, if we were to say is this initiated by Council, the Council members don't really have a purpose to have initiated this other than planning and zoning recommendation.

Council member Mathews said I think it is initiated by Council because it's not him with an application right. Brian said right.

Council member Garren said it is making that statement that Council initiated this action.

Council member Mathews said I think that is just legal jargon though isn't it.

Brian said it is legal jargon but that's what it is.

Council member McVan said going back to your point though, it wasn't the right avenue, this isn't what the Council method is used for.

Brian said it was the right avenue up to today, it was an available option and you are now presented with the first reading of a piece of legislation. If Council does not like that legislation move to table it. It wasn't right or wrong, Pat's right, you have two ways to do it, go talk to

somebody and council can bring forth a piece of legislation, that's all I did was draft it, it's like any other piece, you don't like it, you don't want it, you can do what you want with it but it was an available avenue to do. To do it by initiation or to have Council come forward as you have done tonight, and you have done it tonight, and you have read it one time and you are taking that approach to rezoning it. Now if Council decides hey, we don't want to do that, table it and say applicant, property owner go back and do an application and you initiate it, do the planning commission, we will come back and Council will then vote later on. It was a right avenue just one you may not want right now.

Ed asked Brian if there was a way he would recommend, particularly. Brian said no, if you want to table it table it. I have lots of opinions just ask my wife, those don't matter right now, you can keep going and you are fine.

Council member Dalvi said the only Council member that was close to this issue was Dan because he is on planning and zoning and he asked Dan what his thoughts are. He said that here is my view all I want to do is figure out the process part and I think the rezoning is the right thing to do and we don't want to take the resident through the pain and all that stuff but I do want the resident to follow the process that we have whatever that is. Council member Mathews said again, giving these two processes, and not knowing what the processes were, he initiated it by asking Pat. So that was his initiation and if these were the options then he did nothing wrong, he took that option. As far as planning and zoning and what planning and zoning decided was do we want to move this from commercial to residential? That was it, that's the decision.

Council member Dalvi said basically the conclusion is we have to go back and figure out some issue with our processes, maybe it not process, maybe more definition but what I am hearing is that he did not do anything wrong, planning commission did not do anything wrong, he will be following the same subsequent process by filling out the application form and I don't know what the fee is. Shirley said it is \$1,250.00. Council member Dalvi said that is a whole different thing. Council member Mathews said if there is a hole in it that doesn't seem like much of a decision to anybody that I can think of.

Mayor Monahan said I want to go back to your discussion, there were two avenues and he followed this one and in any piece of legislation you do to change that does not retroactively go back and do anything. Council member Dalvi said it doesn't do it but Council can table this and ask him to pay the application fee and submit an application.

Mayor Monahan said I want to go back to he followed a path that was there, if you want him to do that I am fine but I like to get to the point where we call the question.

Council member McVan said but the path was judgmentally taken wrong because an individual property owner, to me this is common sense, the individual property owner comes forward, goes through the process, the application, boom, boom, boom. The only other thing available is if Council wants to do a betterment of the community on a larger scale. That's the only other thing that that's there for. There really is not two avenues.

Council members Dalvi and Garren agree

Brian said that Council is saying that we are not going to initiate individual rezones of individual parcels, that's an acceptable position to take.

Mayor Monahan said and that could be written into the code going forward.

It was moved by Dalvi, seconded by Garren to table Ordinance 18-2013. Following vote on the motion was recorded: yea, 4; Dalvi, Garren, Gauldin, and McVan. Nay, 2; Callender and Mathews. Chair declared the motion passed by a 4-2 vote.

**Bills**

It was moved by Gauldin, seconded by Garren to pay the bills in the amount of \$41,357.59. Following vote on the motion was recorded: yea, 6; Callender, Dalvi, Garren, Gauldin, Mathews and McVan. Nay, none. Chair declared the motion passed by a 6-0 vote.

**Treasurer’s Report**

It was moved by Garren, seconded by Dalvi to approve the following treasurer’s report: General Fund 219,567.06, Street Fund 102,631.09, State Highway Fund 4,483.68, Drug Law Enforcement Fund 627.00, Enforcement and Education Fund 1,985.00, Mayor’s Court Computer Fund 7,635.43, Fire Fund 122,416.67, Weed Fund 8,179.17, TIF Fund 11,507.22, TIF 2 Fund 470.17, Veteran’s Memorial Fund 98.97, Capital Projects Building Fund 90,065.76, Capital Projects Intersection Fund 50,000.00, Capital Projects 9484 Dublin Rd. Fund 5,770.25, Capital Project Sidewalks Fund 118,305.00, Sewer Operating Fund 62,687.79, Sewer Replacement Fund 106,000.00, Storm Sewer Fund 7,905.63, Enterprise Debt Service Fund 99,834.92 and enterprise Debt Service Reserve Fund 98,859.69 for a total of \$1,119,030.50. Following vote on the motion was recorded: yea, 6; Callender, Dalvi, Garren, Gauldin, Mathews and McVan. Nay, none. Chair declared the motion passed by a 6-0 vote.

There being no further business, it was moved by Gauldin, seconded by Callender to adjourn until August 12, 2013. Following vote on the motion was recorded: yea, 6; Callender, Dalvi, Garren, Gauldin, Mathews and McVan. Nay, none. Chair declared the meeting adjourned at 8:15 p.m.

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Fiscal Officer

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Mayor