

## **Minutes of September 19, 2024 Council**

Meeting of the Clayton, Ohio City Council  
Clayton Government Center  
September 19, 2024

### **CALL TO ORDER**

The meeting was called to order by Mayor Stevens at 7:30 PM. Present were Mayor Stevens and Councilmembers Farmer, Henning, Gorman, Merkle, Kelly, and Bachman.

### **SPECIAL PRESENTATION**

Swearing in and Badge Pinning of Police Officer Jack Anderson

Introduced of Firefighter/EMT Terrance Gates

### **PUBLIC HEARING**

Mayor Stevens announced we have two Public Hearings this evening. He then read the rules for public hearings and administered the Oath for those planning on speaking on either case.

Our first Public Hearing is for Planning Commission case PC24-02, a request to rezone the properties at M60 03109 0030 and M60 03109 0034 from RSD to CMS. The request was made by Gerald L. McDonald, the applicant.

Ellen Snyder, Planning and Zoning Manager, advised application PC24-02 for rezoning was received on June 10, 2024. The applicant is Gerald L. McDonald, on behalf of the property owners. The property owners of M60 03109 0030 which consists of 2.044 acres at 4970 Wenger Road are BLK94 Holdings LLC. The house was removed but one small accessory structure remains on the property. M60 03109 0034 consists of 3.0313 acres at 4940 Wenger Road, which had a house that was also removed but a small garage remains, and 7870 Hoke Road, where a residential home remains. The property owners are Terry D. and Bonita J. Kipling. A public notice was printed in the Eaton Register Herald on August 14, 2024 and in the Dayton Daily News on September 10, 2024, and letters to property owners within 300 feet of the site were postmarked and mailed on August 16, 2024 and September 9, 2024. The location of the parcels is near the intersection of Wenger Road and Hoke Road. Parcel IDs are M60 03109 0030 and M60 03109 0034 and have a combined acreage of 5.0753 acres. It should be noted that M60 03109 0060 that consists of 2.040 acres was recently combined with M60 03109 0034 that was previously 0.993 acres. The current zoning is RSD, Residential Single-Unit District, and the proposed zoning is CMX, Commercial Mixed Use. Ms. Snyder shared images of the surrounding area and the specific area of this request. The applicant desires to convert the existing zoning of the parcels from RSD to CMX and does not desire to change the existing parcel layout as a result of the zoning change. The property is located within the Clayton Improvement District #1, CID-1. The existing zoning of RSD allows a number of permitted and conditional Residential Uses. The proposed zoning of CMX allows a number of permitted and conditional Residential and Commercial Uses. The use of the one existing residential structure is permitted with the proposed Zoning change. The use of the one existing accessory structure is already considered legal-nonconforming; the change in zoning would not change that classification. The applicant indicates no new development is proposed with this application, and any future modifications to the use of the property will require a Zoning Certificate, Building

Permit, and other applicable studies/assessments. The Future Land Use Plan indicates the intent of this area to be Flex Use. After evaluating the applicant's request, and providing an opportunity for public input, the Planning Commission passed a motion to recommend approval of the Proposed Rezoning.

The applicant, Gerald McDonald, stated he is with the firm Pickrel, Schaeffer and Ebeling. He stated this project is supported by City staff and recommended by the Planning Commission. It's consistent with City's Land Use Plan, consistent with the trends in the area, and it can serve as a catalyst for Council's visions for this area.

Gorman asked Mr. McDonald if they were aware of the Montgomery County Soil and Water drainage project on Wenger Road, and there is a roundabout planned for that intersection. I was told you did not have a problem with either of those items, and whatever you do you will protect those two projects. Mr. McDonald replied, we have no choice on either of those two things and are fully aware.

Kelly asked, so you are fully in compliance. Mr. McDonald replied, yes, with the future land use plans.

Farmer asked, you stated you have no change in use, so you do not have a proposed use. Mr. McDonald stated no, we do not have anyone waiting in the wings.

Henning asked if staff has heard any concerns from adjacent properties. Amanda Zimmerlin, City Manager, advised we have not received any notices from any of the residents of adjacent properties.

Mayor Stevens after hearing no further questions from Council, asked for a motion to open the floor for public comments. Motion by Bachman to open the floor for public comments, motion as second by Gorman. All yeas, motion carried.

Mayor Stevens asked if anyone wished to speak on this case tonight.

Rick Bowers stated everyone in the neighborhood is for this request, and everyone is excited for the roundabout that is coming and the widening of the road. We would like to see this move forward.

Robert Fea wanted to verify that all neighboring property owners have been notified. Ms. Zimmerlin stated they have.

Stevens asked Council if they had any further questions. Hearing none, Stevens asked for a motion to close the floor for public comments. Motion by Gorman to close the floor for public comments, motion was second by Kelly. All yeas, motion carried.

Farmer asked Council to look at the zoning code 1141.10 Item 3, it says the application have a proposed use of the property and we really don't have a proposed use and that leaves me concerned.

Merkle stated one of the concerns or questions that comes up, a person looking for property to develop isn't going to be looking at property zoned residential, they're looking for commercial or retail type places.

Henning stated Mr. Muncy on the Planning Commission was the only member who voted against the rezoning stating he had no problem with it but would have preferred to have an end user for us to approve and control.

Ms. Zimmerlin stated when we talk about control, just because it changes to CMX doesn't mean that developers get free reign. There are guidelines that are put in place by this Council in the zoning code that directs staff as to what can go in those places. Some of those are conditional uses, so they would have to work their way through the BZA. It's not like they can just come in and drop whatever they like in that spot, there are processes, they are still held to other sections of the code 1126 for non-residential standards.

Hearing no further comments, Mayor Stevens asked for a motion to close this public hearing. Motion by Gorman to close this public hearing, motion was second by Kelly. All yeas, motion carried.

Mayor Stevens announced that we also are holding a Public Hearing this evening for PC24-03 a request to rezone the property at M60 03206 0020 from RCD-2 to RSD. The request was made by Clayton Land Holding LLC., the property owner.

Ms. Snyder, Planning and Zoning Manager, advised application PC24-03 for rezoning was received on July 2, 2024. The applicant is Bill Parker, on behalf of Clayton Land Holding, LLC, the property owner. Parcel M60 03206 0020 consists of 10 acres and there are no structures on this parcel. A public notice was printed in the Eaton Register Herald on August 14, 2024 and the Dayton Daily News on September 9, 2024, and letters to property owners within 300 feet of the site were postmarked and mailed on August 16, 2024 and September 9, 2024. The location of parcel is near the intersection of Westbrook Road and Hoke Road, the parcel ID is M60 03206 0020 and has an acreage of 10 acres. The current zoning is RCD-2, Rural Conservation District and the proposed zoning is RSD, Residential Single Unit District. Ms. Snyder shared images of the surrounding area and the specific area of this request. The applicant desires to convert the existing Zoning of the parcels from RCD-2 to RSD and does desire to change the existing parcel layout as a result of the Zoning change. The minimum acreage for RCD-2 is 10 acres, and the applicant is seeking a zoning change in order to split the parcel into two pieces. The applicant intends to sell four acres to an adjacent property owner to the North, and then sell the remaining six acres to an interested buyer; who may have an interest in developing the property into a small residential neighborhood. The property is not located within the Clayton Improvement District #1, CID-1. The applicant indicates no new development is proposed with this application, but that future development is possible. Any future modification to the configuration of property that will exceed the creation of five parcels, dedicate right-of-way, create easements, or otherwise be considered a major subdivision will require Planning Commission and City Council approval as a Major Subdivision. The Future Land Use Plan indicates the intent of this area to be Industrial. The proposed zoning change to RSD would present a less intense land-use and is more desirable to residential property owners on adjacent properties. After evaluating the applicant's request, and providing an opportunity for public input, the Planning Commission passed a motion to recommend denial of the proposed rezoning.

Bill Parker advised he is a co-managing member of Clayton Land Holdings, consisting of 10 members who purchased this property in the early 2000's. Everyone is aging and are now interested in selling the property. We propose selling four acres to the property owner to the North and potentially sell the remaining seven, as there is an additional one acre lot, to an interested party. We don't know their use at this time. This property is across the street from RSD and is surrounded by residential properties. Your Comprehensive Land Use Plan has these

ten acres zoned Industrial, it's not a good transition to Moss Creek that is trying to come back. City staff has approved our plan.

Mr. Farmer asked if you had considered splitting and rezoning the property. Ms. Zimmerlin stated the issue of going before the BZA would be to split off the four acres, since it's RCD-2 they could not split off a four acre lot, it would make it a non-conforming lot in RCD-2 and that is not permitted.

Mr. Henning as what was staff's recommendation to the Planning Commission. Ms. Zimmerlin stated staff's recommendation was to approve the change.

Stevens asked if Mr. Parker was aware the State of Ohio has proposed a roundabout at Westbrook and Hoke. Mr. Parker stated no, but I would like to see that.

Merkle asked why are you asking for a rezoning from RCD-2 to residential, is there a reason why didn't want to just split it between RCD-1. Parker stated it's no different than commercial if we want to get the best value out of it.

Mayor Stevens after hearing no further questions from Council, asked for a motion to open the floor for public comments. Motion by Bachman to open the floor for public comments, motion as second by Kelly. All yeas, motion carried.

Mayor Stevens asked if anyone wished to speak on this case tonight, no public comments for or against this case were heard. Stevens asked for a motion to close the floor for public comments. Motion by Gorman to close the floor for public comments, motion was second by Kelly. All yeas, motion carried.

Stevens asked Council if they had any further questions, hearing none, Mayor Stevens asked for a motion to close this public hearing. Motion by Gorman to close this public hearing, motion was second by Kelly. All yeas, motion carried.

#### **CLERK'S REPORT**

Clerk Seim presented the minutes of the September 5, 2024 Council meeting. Motion by Gorman, second by Kelly to approve the minutes as presented. All yeas, motion carried.

#### **VISITOR'S COMMENTS**

Debbie Whisler asked Council to revisit no leaf collection this year and asked that they please reinstate the program.

Earl Harlamert advised the Parks Commission, and anyone wishing to volunteer, will be painting the baseball dugouts and concession stand at Hardscrabble Park on Saturday, September 28th at 8:30 a.m.

#### **OLD BUSINESS**

Ordinance No. O – 09 – 24 – 16 An Ordinance to Confirm Acceptance of Specified Right of Way Dedication at Sweet Potato Ridge Road. Second reading, no further discussion. Motion by Gorman to approve the Ordinance, second by Henning. All yeas, motion carried.

Ordinance No. O – 09 – 24 – 17 An Ordinance to Confirm Acceptance of Specified Right of Way Dedication at Salem Avenue and Union Road. Second reading, no further discussion. Motion by Gorman to approve the Ordinance, second by Kelly. All yeas, motion carried.

## **NEW BUSINESS**

Ordinance No. O – 09 – 24 – 18 An Ordinance (Adopting, Rejecting, Modifying) the Planning Commission’s Recommendation to Approve the Application for a Change in Zoning from RSD (Residential Single Unit District) to CMX (Commercial Mixed Use) for 5.0753 Acres of Property Located at Wenger Road and Hoke Road and Bearing the Parcel I.D. numbers M60 03109 0030, M60 03109 0060, and M60 03109 0034 Within the City of Clayton, Ohio. Motion by Gorman to Adopt the Planning Commission’s recommendation to approve the application, motion was second by Bachman. Voting: Farmer no, Henning-yes, Gorman-yes, Merkle-yes, Kelly-abstain, Bachman-yes, and Stevens-yes. Motion passed 5-1 with one abstention.

Ordinance No. O -09-24-19 An Ordinance (Adopting, Rejecting, Modifying) the Planning Commission’s Recommendation to Deny the Application for a Change in Zoning from RCD-2 (Rural Conservation District) to RSD (Residential Single Unit District) for 10 Acres of Property Located at Hoke Road and Westbrook Road Bearing the Parcel I.D. No. M60 03206 0020 within the City of Clayton, Ohio. Motion by Henning to reject the Planning Commission’s recommendation of denial and to approve this application, motion was second by Kelly. Voting: Farmer-no, Henning-yes, Gorman-yes, Merkle-no, Kelly-yes, Bachman-yes, and Stevens-yes. Motion passed 5-2.

Resolution No. R – 09 – 24 – 50 A Resolution Accepting the Amounts and Rates as Determined by the Montgomery County Budget Commission and Authorizing the Necessary Tax Levies and Certifying them to the County Auditor. Kevin Schweitzer, Finance Director, advised this is an annual function that each taxing authority passes their necessary tax levies, and certify the levies to the county auditor. This allows the City to levy the property tax rates, both voted and unvoted, and subsequently collect the associated revenues. Motion by Henning to approve the Resolution, second by Kelly. All yeas, motion carried.

Resolution No. R – 09 – 24 – 51 A Resolution Authorizing the City Manager to Enter Into Agreement(s) and Execute Needed Documentation with Medicount Management, Inc., Public Consulting Group, and/or the State of Ohio and Medicaid to Participate in the Ground Emergency Medical Transport Supplemental Payment Program. Brian Garver, Fire Chief, advised the State passed the Ground Emergency Medical Transport Supplemental Payment Program. This law allows organizations that conduct medical transports to capture more of the actual cost of the ambulance transport than what Medicare currently allows. This will be conducted through our current EMS billing company, MediCount, an additional third-party billing company, Public Consulting Group, and the State of Ohio. The supplemental payments will come from the Federal Medicaid System through the State of Ohio. Motion by Gorman to approve the Resolution, second by Henning. All yeas, motion carried.

## **CITY MANAGER’S REPORT**

Amanda Zimmerlin, City Manager, advised we will have an open seat on the Board of Zoning Appeals as one of our members has indicated she’s no longer interested when her term expires in December. We will be advertising for that position. Montgomery County Soil and Water, for the Wenger Road drainage project, has rescheduled the public hearing for October 9<sup>th</sup> at 10 am at the Janice Ward Center. I want to announce that Fire Chief Garver graduated from the Leadership Academy last week, this program is through the Center for Local Government. If

you recall, back in June, Schneck Development came in and gave Council a presentation and Work Session on what they are calling Warner Village on Sweet Potato Ridge Road near Main Street. They are having their own open house, please note this is outside of the City's process, and they have not submitted anything to the Planning Commission. They are looking for the public's input on this site and what the public would like to see there with the development they have. They are holding an open house at Meadowbrook on Tuesday, October 1<sup>st</sup> from 5 to 7 p.m. Their goal is to have as many residents as possible from the area there to talk about what the plan is and what they would like to see. This is only a FYI, is completely outside the City's process, and is not a public meeting for us, this is their own open house. The Fall newsletter has been mailed, is posted to the City's website, and is being pushed out on social media. Staff would like to give a Meadowbrook update on October 3<sup>rd</sup>, we'll do it as a Special Presentation that evening. Issue 6 is the police and fire levy that we are putting on the November 5<sup>th</sup> ballot. There will be two informational meetings one is Monday, September 30<sup>th</sup> at 6:30 p.m. it is here at this building. There is also a zoom option if you would like to participate virtually. Then again, we'll hold another one on October 15<sup>th</sup> at the same time, 6:30 p.m., here again in this room and there will also be a zoom option as well. There is a flyer that has been put out on our social media, there is print copies here, we'll put some at the library and at the YMCA for people to access. Leaf collection, to get the messaging out, we have put on our incoming calls the messaging basically letting residents know that the city will not be completing leaf pickup this year. They are able to have their leaves bagged and picked up by Rumpke between October 1<sup>st</sup> and December 15<sup>th</sup>. There will also be a reverse call through the Hyper Reach system that will go out tomorrow to everyone who is listed, that's about 3,500 numbers that had signed up.

#### **COUNCIL MEMBER COMMENTS**

Bachman welcomed Officer Anderson and Firefighter/EMT Gates to the city, they are both great additions to their departments. Regarding rezoning, this is how I look at the political philosophy on property rights, when someone comes to us, the government, and they want to rezone their property, I take that very seriously in the fact that it's now the government saying what you can and can't do with your property. The way I look at it, when someone comes for rezoning, I give them the benefit of the doubt, and then I have to be sold on is this something that is going to be detrimental to the surrounding area or the community. As I stated a few months ago, this is America and property ownership rights do matter. Kelly stated Issue 6 is imperative and we need to consider all the options. If you don't want to lose staff, if you don't want to see our safety city status going in the opposite direction, then you need to consider voting. Merkle stated the concerns for voting for Issue 6, coming up in November, is on for the police and fire, but my thought is also keep in mind that we're also talking about the rest of the city staff. The other persons that work at the city are just as important. While they're not named directly, you have the service department that work every single day. They are the ones that you depend upon in the wintertime to clear the streets of the snow or pick up the leaves when we have leaf pickup. Those individuals are not to be forgotten. As money gets tighter services get cut, you try to cut the services before you cut the personnel. Cities are service oriented from the standpoint, you don't raise money, you're costing money. Remember what are you getting from the money you're giving when you pay your taxes that support everything. Get out and vote in November and vote your conscience but remember there are consequences. Gorman stated all I will say is, vote for Issue 6. Henning announced that October 7<sup>th</sup> is the last day to register for voting. Early voting begins October 8<sup>th</sup> and will run for 28 days. You can early vote at the Board of Elections

offices. Absentee ballots will be mailed October 8<sup>th</sup>. You can also go to [www.voteohio.gov](http://www.voteohio.gov) for information on where and how to vote. Welcome Officer Anderson and Firefighter/EMT Gates to the team. Kevin (Schweitzer) has done a tremendous job with finances over years. We've always listened to him, he's very transparent. If anyone has any questions about the finances and needs to know why this is important, please reach out to him for more information. Farmer congratulated Chief Garver on his graduation from the Leadership Academy, I'm always in support of education. I've had some good conversations with Mr. Muncy who is on the Planning Commission, he's a Land Use Attorney. I respect all the members of the Planning Commission and appreciate what they do, they're volunteers of the community, and help Council make better decisions. Stevens shared an anonymous voicemail he received from a resident.

#### **EXECUTIVE SESSION**

Mayor Stevens advised an Executive Session is needed this evening. Law Director Martina Dillon stated the Executive Session is needed for matters pertaining to litigation pursuant to ORC 121.22 (G)(3) and (5). Gorman made a motion to break for an Executive Session, motion was second by Merkle. Voting: Farmer-yes, Henning-yes, Gorman-yes, Merkle-yes, Kelly-yes, Bachman-yes and Stevens-yes. Motion carried 7-0. Council broke for Executive Session at 9:22 PM. Council returned to regular session at 9:46 PM.

There being no further business, motion was made by Gorman to close tonight's meeting, motion was second by Kelly to adjourn. All yeas, motion carried.

Meeting adjourned at 9:47 PM.