

**Council for the Village of Yellow Springs
Regular Session Minutes**

Virtual Meeting @ 6:00 P.M.

Monday, February 7, 2022

CALL TO ORDER

President of Council Brian Housh called the meeting to order at 6:00pm.

ROLL CALL

Present were President Housh, Vice President Kevin Stokes and Council members Lisa Kreeger, Marianne MacQueen and Carmen Brown. Also present were Village Manager Josue Salmeron and Solicitor Breanne Parcels.

EXECUTIVE SESSION

At 6:01pm, MacQueen MOVED to ENTER EXECUTIVE SESSION for the Purpose of Discussion of Potential Litigation. Kreeger SECONDED, and the MOTION PASSED 5-0 ON A ROLL CALL VOTE.

At 6:48pm, Kreeger MOVED and Stokes SECONDED a MOTION TO EXIT EXECUTIVE SESSION. The MOTION PASSED 5-0 ON A ROLL CALL VOTE.

ANNOUNCEMENTS

Housh gave a shout-out to Gini Meekin and Delia Hallett, who both qualified for State Finals in their Speech and Debate categories on Saturday.

Housh thanked Bike Yellow Springs for funding repair of the fix-it station at the Train Station.

Housh wished a Happy Birthday to Johnnie Burns and thanked the VYS crew for epic snow removal.

Housh noted that the second meeting in February will occur on Tuesday the 22nd.

Housh recognized Cindy Sieck for earning a “Top 100 Public Service Volunteers” award from Small Towns America. Sieck has assisted with a number of Village projects over a number of years.

Salmeron added to the thanks to the Village team, noting their excellent planning and preparation for emergencies.

CONSENT AGENDA

1. Minutes of January 10, 2022 Special Meeting: Work Session
2. Minutes of January 18, 2022 Regular Session

Stokes MOVED and MacQueen SECONDED a MOTION TO APPROVE THE CONSENT AGENDA. The MOTION PASSED 5-0 ON A ROLL CALL VOTE.

REVIEW OF AGENDA

There were no changes made.

PETITIONS/COMMUNICATIONS

The Clerk will receive and file:

Small Town Volunteer Award: Cindy Sieck

Nick Boutis re: Glen Helen/TLT Grant Award for Site Clean Up
Connie Collette re: Support for PUD
Sarah Mabra re: Opposition to PUD
Emily Foubert re: Opposition to PUD
Brittany Baum re: Opposition to PUD
Kathy Adams re: Support for PUD
Alexandra Scott re: Request for Time on Agenda for Section 8
Catherine Price re: Comments on PUD/Opposition to PUD (2)
Carolyn Ray re: Support for PUD
Mayor's Clerk re: Mayor's Court Report (2)
Dino Pallotta re: Housing Finance Information Links
Dino Pallotta re: Challenge to PUD Process
Felicia Chappelle re: Objection to PUD
Johanna Schultz-Herman re: Objection to PUD
Max Crome re: Link to Presentation by Max Crome
GCCHD re: Vaccine Clinic Feb. 8 at Antioch College
"RAYS" Trustee Max Crome re: Objection to PUD (3)
Laura Curliss re: Opposition to PUD
Shirley Kristensen re: Opposition to PUD

Stokes reviewed the materials received.

PUBLIC HEARINGS/LEGISLATION

Second Reading and Public Hearing of Ordinance 2022-02 Rezoning 52.65 Acres of Property Located North of East Hyde Road and West of Spillan Road to Planned Unit Development Residential (PUD-R) and Amending the Zoning Map Thereby Approving the Preliminary Development Plan. MacQueen MOVED and Kreeger SECONDED a MOTION TO APPROVE.

Housh asked Council members to identify any further information they may need to make a final decision.

Stokes recused from the hearing and vote due to potential conflict of interest.

Kreeger identified financial analysis of the cost/benefits as well as the "complementary mix of housing types."

MacQueen made a general statement about the PUD, stressing four points: There are only two options on the table, she stated, the proposed PUD, or a single family subdivision. She stated that the information has been made readily available, but is admittedly complex, involving a number of legal documents.

MacQueen commented that a PUD is considered an opportunity for negotiation with a developer, but that in this case, Oberer already had what they wanted, which was a single family subdivision. It speaks well of Oberer and well of staff, she said, that Oberer was willing to listen and work with the Village over a year's time to negotiate this deal. MacQueen stated that the team have "put their heart and soul into this negotiation."

MacQueen opined that it appears there are three groups of people opposed to the PUD, the first of which do not understand the available choices, the second, which do understand the choices but simply prefer the R-A option, and the third, which is comprised of people who do understand the choices, but whose strategy is to oppose the PUD and to take any action possible to stall the developer's ability to proceed.

MacQueen pointed out that no one—not the Village or any other entity, none of us who knew that the property was available for sale for decades—had offered to purchase the property prior to its sale to Oberer. Had we, she said, we would have more options, she said, we didn't do it.

MacQueen stated that Dave Chappelle and Max Crome (Chappelle's personal architect) have both stated that passage of the PUD will be harmful to their business interests. I would like to know what those are, and how this development could possibly be harmful, she said, but that information has not been provided. She noted that Crome's lawyer has made a massive public records request for Council and Village e-mail and texts on Crome's behalf, which seems to her to be a "fishing expedition".

MacQueen addressed the property itself, stating that the property has been farmed using industrial fertilizers for some time, and that the stream is far from pristine. She stated that there is an old oak tree there that she would like to see preserved.

MacQueen stated that the development could be the first in the Village to be an entirely natural habit neighborhood.

Matt Kirk stated that he had worked on the Manager's Housing Committee when the Oberer development was first brought before the Village, and that he'd at first been in favor of the development, but that he'd lost enthusiasm when there were not duplexes but townhomes, which he characterized as "condos", brought as an option. He stressed that most homebuyers desire single family homes, and that this is a better option.

Gyamfi Gymerah asked Council to "do the people's bidding". He asked for a review of the process of the plan and alleged that there was not enough transparency. He stated that the YSDC has been courting Oberer in this process.

Lisa Abel, Hydrogeologist, asserted that the YSDC has had nothing whatsoever to do with the Oberer project. Abel proceeded to carefully explain the process of groundwater testing, and why it is done (soil does not move, water does, and any soil contamination moves by way of water). She stated that she had been the project manager for the groundwater contamination project for YSI in 2001.

Abel described the rock formations and hydrogeology in the area, stating that dozens of wells had been drilled, knowing that the source of the contamination was at YSI. If there were a dump that could have contaminated the groundwater in that area, the well testing over that 20 year period would have shown these contaminants. None were ever found, she said.

Johnnie Dread asked that something better be brought to the table. He raised concern that Chappelle will pull his development projects. He complained about the lack of housing in general, but stated that what was brought to the table was bad because citizens were not involved in the process.

Max Crome asserted that here are four options, not two. He stated that he is "respected all over the country", and stated that he has retained a lawyer only so he can prevent Brian Housh from responding to his statements in what he deemed a defamatory manner.

Ellis Jacobs stated that affordable housing is a critical need in the Village, and stated that while he wished the development offered more, the concession to affordable housing and mixed use housing in the PUD plan "is valuable" and worth a yes vote. Jacobs stated his concern that he is not hearing a viable strategy for getting a better product. He asked that the zoning code process be examined going forward, so that better options can be put on the table.

John Hempfling stated his support for the PUD, opining that the PUD will result in far less gentrification than the parallel plan.

Amy Wamsley expressed concern for the process as a whole, stating that the process has disenfranchised citizens.

Eve Fleck, whose home is adjacent to the Oberer property, stated her support for the PUD. “I wish it were more to my liking,” she said, “but I am in favor of affordable housing.”

Diane Chiddester expressed support for the PUD in that it provides more types of housing than the straight R-A development.

Kate Hamilton stated that her family had been unable to find a home some years ago and had built a home in Birch III. At that time, she asked the developer why there were no duplexes in the development, and was told that the neighbors had spoken out against this, citing fear of a loss of property values. She expressed support for the PUD.

Jamie Fine, a California resident formerly from the Village, opined against the PUD and asserted that a dump had been located on the property. He offered his help in understanding financial impacts.

Eric Oberg stated that he had heard a comment from the Mills Park Hotel gathering along the lines of “decades of Councils have stopped development and we hope this Council will too.” Oberg expressed his hope that he had mis-heard, since this is why there is such a current lack of housing. He asked that the statement be made honestly.

Hempfling commented that the PUD will bring the Village 1.75 acres of land for as many as 24 affordable houses. She stressed the enormity of this possibility, and noted that all Council members ran on a platform of affordable housing.

Patrick Lake commented on the “erosion of cultural diversity” in the Village. He asked for more access to affordable rentals and housing that “meets our values.” Lake stated that he will support referendum if the PUD passes.

Dino Pallotta stated that Council members are voting “from a position of fear” and stated that a Phase II study is required, and that not doing so is not putting villagers’ safety first.

Pat Brown stated that more housing is “desperately needed” in the Village. She expressed support for the PUD, and thanked the Village for its work with Oberer.

Housh stated that he has a duty to call out misinformation when it is presented during a meeting, and will do so. He noted that the YSDC has not been involved in the Oberer project at any point.

Matt Kirk commented that the single family development will free up other homes in the Village.

Johnnie Dread commented that no good option is being offered, and asserted that passage of the PUD will be an irreversible, far reaching decision. He asserted that if Council “would just listen” they could come up with a better plan.

Kendra Cippolini commented that “our ordinance demands a better PUD” and demanded more information on the dump.

Johanna Schultz-Herman asserted that the PUD is in “direct violation of chapter 1254” and proceeded to read excerpts from the chapter. She asserted that the PUD “has to be consistent with the Comprehensive Land Use Plan and Vision.”

Kelly Carpe characterized the vote as a “fear vote,” and described the land donation as “a pittance.” She stated of the PUD that “no one wants this option.”

Jill Eggleton expressed anger at MacQueen for, in her view, comparing those opposed to the PUD as “Trumpers”. She commented that she had moved to YS “because she saw Chappelle on TV talking about YS.”

Lindsay Burke accused MacQueen of insulting those opposed to the PUD in her characterization of them, then commented that there is “not a single affordable element” in the PUD and requested that entry level and rental housing be built. She alleged that the PUD “does not meet code.”

Dawn Johnson stated that she is a City Planner. She stated that many were part of the visioning and zoning code for the Village. She pointed out that “this is private property” and the process is very different than that for public land use. She noted that “if the property goes to an R-A subdivision you have no say at all in the process.” She commented that there is no public review of the R-A plan, it is administrative only. With a PUD “we get some of what we asked for in the Comprehensive Land Use Plan”.

Brittany Baum asked that Council vote “no” citing long term consequences and a threat to Village culture. She referenced the Comprehensive Land Use Plan.

Laura Curliss argued that there would be a tax loss of “\$216,430.00” over what would be gained if the development were built as R-A. She opined that there would be greater diversity of people moving in under R-A.

Justin Herman spoke to the loss of Village culture if the PUD is approved.

Rob Hauck commented that the Village had chosen not to be innovative and spoke against the PUD.

Nancy Kelley suggested Oberer build tiny houses instead.

Sarah Sinclair Amend commented that “we can do a better job,” and asked for a phase II environmental study.

Catherine Price spoke against the PUD and asked that modifications be made if the current PUD is to be considered.

Dave Chappelle lambasted Council for “making him audition,” characterizing the decision as “kicking out a \$64 million dollar company in favor of a \$24 million dollar company.” Chappelle stated that he would “take it all off the table” presumably referring to his investments in the community.

Housh officially opened the public hearing.

Housh commented on a memo from Curliss in which she laid out the tax loss that would occur if the PUD were built instead of the R-A development, highlighting that she had removed the reference to “not including affordable housing” and that it is important to factor in the tax gain from those units, which makes PUD and R-A similar in taxes generated. He stated that tax revenue is not the only factor under

consideration, and the mix of housing and addition of affordable homes will go a long way towards easing market pressure and in enabling those who work locally to afford to live in the Village. Finally, Housh clarified that any changes made to the zoning code after Oberer has submitted their PUD proposal would not be in effect for consideration of this development.

Swinger spoke to the factors--- three benefits out of eight possible listed in the zoning code under the PUD process—that have to be met for the PUD to meet code. She named the factors met as being a mix of housing types; connectivity both within the development and to surrounding properties, and open space, which Swinger noted as a required 15%, and Oberer has provided over 21%.

Swinger opined that there are only three potential options as she views the situation: approve the PUD; deny the PUD and the R-A subdivision is built, or purchase the property from Oberer and develop it in a different manner.

Swinger noted that staff can only work with the existing code. She described the process of working with Oberer to obtain an annexation and then to work on a PUD with an affordable housing set-aside and mixed housing types.

Housh responded to the allegations of Council members “voting out of fear”, stating that that is not his position at all. He referenced the problematic assertions in the letters from legal firms representing the RAYS group, one of which (a consultancy from California) alleged that the PUD would be an illegal spot zone.

Parcels clarified that zoning cannot be changed without the permission of the property owner. She stated that the PUD in question does not fit the definition of a spot zone in any way.

Parcels addressed allegations made against the Chair of the Planning Commission, who owns land across the street from the Oberer property. She noted that she had advised Doden to recuse from the annexation process because several feet of his property was named in the process, but that moving forward from that point he did not have to recuse. The reason for the latter advice, she explained, was that there is a deed restriction on Doden’s property which restricts development to the point that the Oberer development would have no impact on Doden’s ability to develop or sell the property.

George Oberer spoke regarding the PUD rezoning request. He noted that he and his brother had met with Dave Chappelle and Max Crome over a year ago to let them know of their proposed development of the area under R-A zoning. Oberer commented that Chappelle had previously been interested in purchasing only the ten or so acres behind his home but that the seller was not interested in splitting up the property.

Oberer stated that he was never approached by Chappelle about buying a portion of the property.

Oberer stated that the property tax income from the PUD would be very similar to property tax income under R-A zoning, responding to an earlier argument.

Oberer stated that the alleged dump is hearsay, and there has been no proof of such a dump found. He commented that there is “really no such thing as a Phase II environmental study, there is only follow up if there are problems found during Phase I. Oberer noted that they had provided the Phase I study to the Village even though the study was not required. Oberer noted the soil borings with analysis for contaminants which showed no contamination. He noted that any contamination found from this point forward would be mitigated by Oberer.

Oberer commented that the Village's Comprehensive Plan does not require any affordable housing. He stated that Oberer did make an effort to work with Village staff to provide a mix of housing types in response to staff request. He noted that Oberer will also be addressing an infrastructure problem at the south end of town, and are willing to make a \$50,000 donation to safety improvements in the Spillan area.

Housh CLOSED the Public Hearing.

Parcels received an affirmative response from Housh, MacQueen, Kreeger and Brown that they had read the minutes of the November 9th Planning Commission and all other materials submitted for the PUD request, including citizen comments.

Housh MOVED TO APPROVE THE FINDINGS OF PLANNING COMMISSION REGARDING THE PUD. MacQueen SECONDED, and the MOTION PASSED 4-0 on a roll call vote.

Kreeger commented that the development does not move the Village closer to affordable housing in that there is no plan for an apartment building, which would be a significant contribution. She noted the economic integrity of the Village in her thinking.

Kreeger stated that the PUD does not fulfill three aspects of the PUD requirement, in her opinion, those being integration of a complementary group of land types, preservation of natural features and consistency with the Village vision.

Kreeger suggested tabling the issue to further explore these issues as well as a cost-benefit analysis and further environmental issue analysis.

Brown asked that the vote move forward.

Housh expressed skepticism that further financial analysis will be of use, and expressed confidence in Swinger's assessment of the PUD having met five of the required conditions.

Kreeger MOVED to modify the application as follows:

- A revised site plan which shows smaller houses
- Revisiting the environmental study

There being no second, the motion failed.

Housh CALLED THE VOTE. Brown voted "yep". Brown was asked by Housh if she wished to explain the "yes" vote. Brown responded "no". Kreeger voted "no, for the reasons stated." MacQueen made a statement and expressed hope for moving forward to address affordable housing, then voted "yes". Housh stated his commitment to listening and to discerning relevant facts. He stated his commitment to examining the Village zoning code and voted "yes". Brown then interjected, stating "no, I'm opposed to the PUD." She stated her reasons as that the development "is not affordable". The motion failed 2-2, with Brown and Kreeger voting against.

Second Reading and Public Hearing of Ordinance 2022-03 Repealing Old Chapter 288 Arts and Culture Commission of Title Eight Boards and Commissions of Part Two Administration Code of the Codified Ordinances of the Village of Yellow Springs, Ohio and Enacting New Chapter 288 Public Arts and Culture Commission. MacQueen MOVED and Kreeger SECONDED a MOTION TO APPROVE.

Housh OPENED THE PUBLIC HEARING. There being no comment, Housh CLOSED THE PUBLIC HEARING.

Housh CALLED THE VOTE, and the MOTION PASSED 5-0 on a ROLL CALL VOTE.

First Reading of Ordinance 2022-04 Approving a First Quarter Supplemental and Declaring an Emergency. Brown MOVED and Stokes SECONDED a MOTION TO APPROVE.

Housh OPENED THE PUBLIC HEARING.

Dillon explained the supplemental by item.

Salmeron noted that some Lawson Place expenses have carried over from 2021.

Housh CLOSED THE PUBLIC HEARING.

Housh CALLED THE VOTE, and the MOTION PASSED 5-0 ON A ROLL CALL VOTE.

Reading of Resolution 2022-10 Approving Purchase of New Sludge Press. MacQueen MOVED and Kreeger SECONDED a MOTION TO APPROVE.

Salmeron presented a power point on the topic.

Housh CALLED THE VOTE, and the MOTION PASSED 5-0 ON A ROLL CALL VOTE.

Reading of Resolution 2022-11 Approving a Then and Now for the First Quarter of 2022. Stokes MOVED and MacQueen SECONDED a MOTION TO APPROVE.

Salmeron explained that he had neglected to submit a PO for contracted work.

Dillon reported that two of the payments are to cover payments that have been getting made for a prior year. These payments to OWDA and OPC are hereby caught up and will henceforth be paid in the fiscal year the expense occurs.

The last payment covers income tax adjustments to the IRS to cover prior payment errors. This expense also covers late fees for payment.

Dillon responded to Council questions, stating that he will be working with the IRS to understand what mistakes were made and make needed corrections.

Housh CALLED THE VOTE, and the MOTION PASSED 5-0 ON A ROLL CALL VOTE.

CITIZEN CONCERNS

There were no Citizen Concerns.

SPECIAL REPORTS

Treasurer Report. The Clerk provided the Treasurer Report for the third quarter of 2021.

OLD BUSINESS

Council Commissions Update. Housh offered to act as the YS Schools Liaison, and MacQueen offered to act as the alternate.

Stokes offered to serve as the Chamber of Commerce liaison. Housh will remain as alternate.

Mark Heisse, Chamber Director expressed enthusiasm in welcoming a Village representative.

Kreeger reported that she and MacQueen will be speaking with members of the Village Mediation Program, where there is now a Coordinator position open, to determine how the new VMP Coordinator might add capacity to the Citizen Review Board, perhaps acting as the CRB Coordinator for an interim period. This was added to the next agenda.

Stokes commented that the Social Justice Commission will likely not be leading the movement towards formation of a CRB.

NEW BUSINESS

There was no New Business.

MANAGER’S REPORT

Salmeron noted that the topic of Body Worn Cameras should be ready to bring to Council in the next month or so.

Salmeron noted inclusion of water loss charts indicating the Village’s continuing gains in reducing loss.

Salmeron stated that he will be scheduling the Police Chief candidate forums soon.

FUTURE AGENDA ITEMS

- Feb. 22:** Announcements: Alex Scott re: Section 8 Housing
ACC End of Year Report
EC End of Year Report
Active Transportation Commission
Ordinance 2022-XX Amending Section 1226.02 “Subdivision Regulations” of the Codified Ordinances of the Village of Yellow Springs, Ohio
Ordinance Establishing a Street Capital Improvement Fund
Ordinance Establishing a Stormwater Capital Improvement Fund
Revisioning HRC/JSC and Preliminary Goals for this Commission
Personnel Policy Manual Work Session
- March 7:** PC End of Year Report
- March 21:** Social Justice Commission Ordinance

Brown requested that when the CRB matter comes back to Council, it have “the two pillars.”

Kreeger noted that the second pillar has to do with discipline of officers involved in complaints and that this matter requires legal review of the proposed CRB.

The matter was briefly discussed.

ADJOURNMENT

At 9:59pm, Stokes MOVED, and MacQueen SECONDED a MOTION TO ADJOURN. The MOTION PASSED 5-0 on a voice vote.

Brian Housh, Council President

Attest: Judy Kintner, Clerk of Council