**ITEM 1: CALL TO ORDER:** Mayor Flaute called the Riverside, Ohio City Council Meeting to order at 6:00 p.m. at the Riverside Municipal Center located at 1791 Harshman Road, Riverside, Ohio.

**ITEM 2: ROLL CALL:** Council attendance was as follows: Ms. Campbell, present; Mr. Curp, present; Deputy Mayor Denning, present; Mr. Fullenkamp, present; Mr. Schock, present; Mr. Smith, present; and Mayor Flaute, present.

Staff present was as follows: Bryan Chodkowski, City Manager; Emily Christian, Assistant City Manager; Dalma Grandjean, Law Director; Mitch Miller, Service Department; Mark Reiss, Police Department; Bob Turner, Fire Department; Tom Garrett, Finance Department; and Bob Murray, Planning and Economic Development.

**ITEM 3: EXCUSE ABSENT MEMBERS:** There were no absent members.

**ITEM 4: ADDITIONS OR CORRECTIONS TO AGENDA:** The agenda was revised prior to the start of the meeting adding item 15 (II) f, Resolution No. 12-R-1667.

**ITEM 5: APPROVAL OF AGENDA:** A motion was made by Mr. Schock to approve the agenda as revised. Deputy Mayor Denning seconded the motion.

Mayor Flaute said he would like to move the joint work session to the first item because the Law Director has not arrived yet. Mr. Smith suggested moving the DATV discussion item to first because the BZA or Planning Commission might have questions that the Law Director could answer. Mr. Fullenkamp said he would like to have the Law Director here for the DATV discussion too; she may have some input.

Council decided to change the order of the work sessions items to b, c, and a.

With no further discussion, all were in favor; none were opposed. **Motion passed.**

**ITEM 6: WORK SESSION ITEMS:**

1. Joint Work Session with Council / Planning Commission / Board of Zoning Appeals / Multimodal Transportation Commission

Mr. Chodkowski said this joint work session is an ongoing and reoccurring item on council’s agenda. He said typically it happens bi-annually and it is for the purpose of the boards and commissions being able to communicate to council with what they are working on as well as to get direct input from council rather than through staff in regards to the city’s priorities. Mayor Flaute welcomed the board and commission members and thanked them for all they do. He asked the Planning Commission Chair, Rick Kaufhold, to start.

Mr. Kaufhold said the Zoning Code rewrite is before council presently; that’s the biggest ticket item we have been working on over the past many months. Mayor Flaute asked if there were other items the Planning Commission is working on.

Mrs. Lommatzsch asked what the status was of the hearing for the Zoning Map changes. She said when it left planning, it went back to council. Mr. Chodkowski said following the Planning Commission meeting, he had a discussion with the Law Director about the most appropriate way to address the city’s concern, the staff’s concern, and the concerns of the Planning Commission. He said following that discussion, the public hearing will be scheduled for the July 17th meeting and we will proceed with notification through the newsletter as well as publication in the Dayton Daily News about 3 weeks prior to the actual meeting. He said we will also be uploading information to the city’s website once the newsletter goes out.

Mr. Kaufhold said the meeting would be Monday, July 16th.

Mayor Flaute asked Mr. Chodkowski to briefly explain what the issue is. Mr. Chodkowski said the concern is a provision in the codified ordinances that requires at the Planning Commission public hearing that when you rezone a parcel or for any person who is within 300 feet of the subject parcel, the property owners are supposed to receive notification of that rezoning via first class mail. He said in taking a total parcel count, that is something along the lines of 9,400 to 9,500 parcels, and it is rather cost prohibitive to follow that provision of the code. He said that same provision of the code also specifically states that failure to notify someone does not invalidate recommendations by the Planning Commission or actions by City Council. He said in consult with the Law Director, we have formulated language within the public announcement which in a general standpoint advises the citizens that their property is potentially subject to a rezoning and if they would like for specific information on their property and whether or not it is subject to such rezoning, contact the city. He said additionally the current zoning map and the proposed zoning map will be available online so that residents can compare the two to determine if they are impacted by the zoning change.

Mrs. Lommatzsch said the newsletter is not sent first class, so we are circumventing the law of the city and charter by not doing it the way it is stated. Mayor Flaute said that’s your opinion. Mr. Chodkowski said he would disagree with that assessment and he thinks the Law Director would disagree with that assessment but we are attempting to meet the provisions of the codified ordinances to the best of our ability in consideration of all circumstances.

Mrs. Lommatzsch said as she stated at the Planning Commission meeting, the newsletter does not get read by everybody as we have all experienced; it gets put in a pile to look at later. She said it gets looked at 2 weeks later and someone thinks oops, I missed that information. She said she believed we should live by the charter and it says first class mail.

Ms. Gray said she is just hearing this for the first time and she absolutely agrees with Mrs. Lommatzsch; you are saying if a property owner’s property is being rezoned, they are not going to be notified by first class mail – is that what she’s hearing? Mr. Chodkowski said yes. Ms. Gray said her property is worth more than a stamp.

Mayor Flaute said he wasn’t going to voice his opinion now because this will come to council before that. Mr. Chodkowski said no, it will not; the next time it will come before council is when it has a recommendation from the Planning Commission. Mrs. Lommatzsch added after the hearing.

Mayor Flaute asked the Law Director is she had any words of wisdom to help them out. Ms. Dalma Grandjean said the City Manager has correctly stated the considerations here; yes there is a provision that requires notification to each affected as defined property owner by first class mail and then there is a provision immediately after that that states the failure to deliver the notification shall not invalidate the amendment. She said it’s really a policy issue for Council to decide and it could be done by motion today whether it wishes to use a procedure that is different than what the City Manager has suggested. She said the City Manager has proposed something that takes into consideration costs and he has come up with a compromise and again, it would have no legal effect on the action Council would ultimately take with regard to the proposed zoning amendments. Mayor Flaute said his understanding is the change is minimum but the cost would be just under $10,000. Mr. Chodkowski said the postage would be about $5,000. Ms. Grandjean said that’s postage but then there is staff time and other items. Mayor Flaute said so we are talking about $10,000 for a minor change; people will be getting this letter that says they are going from R-3 to R-4 which means what. Mr. Chodkowski said for anybody who has residential property, if they are impacted by this they will be in the vast minority – set backs remain the same for accessory structures and most principle structures, so the zoning change related to residential has a minimum impact on the property that is already being used for that purpose. He said additionally, most commercial and business areas, those too for existing uses for existing structures would be minimally impacted by that. He said there are going to be an isolated number of properties, for instance in Floral Park – the Byesville area – there is a plot of 10 parcels, owned by 5 or 6 people, that is currently zoned industrial and under the current proposal those will be rezoned residential. He said those properties that are being used for industrial purposes will be legal, pre-existing non conformities and they will be able to continue to operate just have they done in the past and their use will continue the same as in the past. He said technically the city would be required to send most folks a notice if it wanted to follow the strict letter that says what the property is going to be rezoned to. He said those were things he took into account when trying to formulate a way to inform residents but to do so in a way that was conscientious of the funds available and the staff available to address the policy in its truest application.

Mayor Flaute asked Council members if they had any thoughts on this. Mr. Smith said the ordinance says we are supposed to notify people by first class letter; it doesn’t say “or”. Mayor Flaute said yes it does. Ms. Grandjean said it doesn’t say “or”; what it does say is if it’s not done, it won’t affect the validity of the zoning amendment. She said Council enacted that ordinance and Council can choose to interpret it. Mr. Chodkowski said unfortunately there is no provision in the code that accounts for comprehensive update of the code or map; all the language within the code is specific to a parcel here and a parcel there or a few parcels together.

Deputy Mayor Denning asked what would be the difference in sending out the newsletter the way we do and just sending it out first class. He said by that we would meet the letter of what we’ve said and we’ve hit everybody. He said he didn’t know what the cost would be but he would be interested in finding out. He said since we are already mailing it out, it seems like the cost would be minimal. He said he believed we are meeting the intent of the rule by getting everybody notification that their property is possibly being rezoned but by doing it in the bulk that we are doing right now it makes it very cost prohibitive to send everybody a separate letter. He said if for some reason we have to do this first class, we send the newsletter out first class this one time.

Mr. Fullenkamp said he tends to agree with the comment made by Ms. Gray. He said there are people that might be important to notify and he doesn’t see the newsletter as a means for getting information out; it doesn’t get read very often. He said if our intent is to inform the public, he didn’t think that was a very effective way to do it.

Mrs. Lommatzsch asked how many zoning districts we are going from and how many zoning districts are we going to. Mr. Chodkowski said we are going from 26 or 27 to 12. Mrs. Lommatzsch said that is a major change in this city.

Mr. Fullenkamp said this was the first time he has heard this discussion on how this was going to be handled. He said he wasn’t sure this was the right way to inform the public.

Mr. Schock said food for thought; we are trying to be a more transparent local government. He said tonight we are talking about televising the meetings; we have our minutes done in full detail; and this could be looked upon by the general public as another government trying to hide something from them. He said he could see the point about saving the tax payers money but once again, what kind of image are we projecting. He said we are only going from 26 zoning districts down to 12, but this is what he is struggling with – he always wants to be transparent and he wants everybody to know exactly what we are doing up here, when we are doing it, and why we are doing it. He said sometimes it costs to put out information that is not that important but the public wants the information no matter what the cost is. He said it’s their money and we are just managing it. Mayor Flaute said we are stewards of that money. Mr. Schock said it how we manage it is what they vote us in here for and this is a tough one to decide.

Mayor Flaute asked if we would put a separate letter in the newsletter or would it just be an article. Mr. Chodkowski said there are articles written; one is an official public notice which will also be run in the Dayton Daily News and in addition to that, there is a lengthy article that explains what we are doing, why we are doing it, and how long we’ve been working on it. He said it also provides direction that you can view all the proposed language on the website as well as see current and proposed maps or come to view a copy at city hall.

Mr. Schock said you just mentioned the Dayton Daily News and it depends on what day you put that in; will it be on Sunday? He said we, as the City of Riverside, are not a big buyer of the newspaper; the circulation rate is the lowest compared to other cities. He said by thinking it’s going in the Dayton Daily News and everybody is going to have it is just not true. He said that can be hit and miss.

Mr. Chodkowski said it doesn’t matter to him; if council wants this done as detailed as we do it when we are rezoning independent parcels or small groups of parcels, that’s fine by him. He said we will be more than happy to redact the letter and we will set everything up for January 1, 2014 and we will work against that.

Mr. Schock said he also wrestles with the cost factor of it and the staff; we don’t have that much staff to do it. He said this one is the toughest one he’s had to deal with.

Mr. Chodkowski said we will have to go through and identify each specific parcel, its parcel ID number, extrapolate its current zoning district, include its proposed zoning district, and glean from the tax code the property owner’s address as opposed to the residential address. Mr. Schock said that’s a couple of week’s worth of work. Mr. Chodkowski said that’s probably a couple of month’s worth of work. Deputy Mayor Denning said so this will slow everything way down. Mr. Chodkowski said in relation to the actual effective date of the proposed code, yes; in order to coordinate all the things that go on that are related to zoning, including funding for the mailing, the next applicable date would be January 1, 2014. Mr. Smith said that’s an awfully long time – 1 ½ years. Mr. Chodkowski said he agreed.

Ms. Campbell asked if we had bulk mail. Mr. Chodkowski said that’s how we mail the newsletter but the question at hand is whether or not we mail specific to the code which says first class mail.

Mr. Curp said he believed the code addressed two different aspects of notification; one is if you have small parcels or single parcels – you have to do all the detailed notification that the City Manager was talking about. He said he thought another section addresses if you are doing an extremely large rezoning similar to this. He said right now he would yield to the manager’s expertise in this but it is something we should take a look at.

Mr. Curp said secondly, he thinks most of us live internally in some neighborhood; we don’t live around the peripheral, so going from an R-4 to an R-3 is not going to have a profound affect on our properties. He said but when we go down from 20 some to a dozen zoning classifications that means we are reducing the number of business classifications and industrial classifications and those are typically ones where we have buffering from a highly intense use to a lesser intense use to a residential area. He said if we are going to fewer business classifications and industrial classifications that means we are moving more highly intensive uses next to residential areas and he thinks those people who live on those buffered areas need to have formal notification because they can be impacted.

Mr. Curp said third, and most important to him, is that we should lead by example. He said this is our ordinance, this is our law, and he thinks we should lead by example in our community in that we should set the image that we are going to follow our ordinances and follow our laws. He said that’s what it comes down to for him and if it costs us an extra $5,000 or whatever; he’s all for being very fiscally responsible with the tax payer’s money – it’s not ours, it’s theirs but on the other hand it’s the cost of doing business.

Mr. Smith said he agreed when you are going from an R-3 to an R-4, that’s not a big change; but when you are going from Industrial to an R-3 that’s a big impact for an individual.

Mayor Flaute said first he wanted to comment about following the letter of the law; we are following the letter of the law either way. Ms. Grandjean said no; the letter of the law is notice will be delivered by first class mail; then the ordinance goes on to say but if you don’t do it, it won’t matter. Mayor Flaute said we are still following the law.

Mr. Curp said it says if the Planning Commission and the City Council go ahead and take the action and make the change and there wasn’t proper notification done, that the courts will not overturn the action. He said it doesn’t mean we haven’t violated the letter of the law, the spirit of the law, and the intent of the law; it just says in cases that have been in court, the courts have said they are not going to overturn the formal actions of the Planning Commissions and the City Councils just because there was a hiccup along the way. Mayor Flaute asked the Law Director if that was a summary of what it is. Ms. Grandjean said yes.

Mr. Kaufhold said he thought the spirit of the law is one of information and communicating information to the residents of the city and he’s seeing no fewer than four different modes of communication being outlined – the newsletter, the website, a press release in a publication of general circulation, and a press release to various media organizations. He said as a tax payer, he thinks it would be irresponsible to spend this kind of money. He said to boil it down – the people who care, care and they are going to be the ones who read the newsletter and the ones who go to the website to check out what’s going on. He said the people who don’t care – don’t care. He said his opinion is that these multiple modes of information are plenty.

Mrs. Denning said she agreed with Mr. Kaufhold and we talked about this a lot; the other thing we threw out at Planning Commission as a possible idea is we also recognize the fact that a lot of people only receive the Thursday and Sunday paper. She said if we couldn’t get out local reporter to put something in the neighborhood section for us, actually it would be cheaper to put an ad in the neighborhood section than it would be to spend the postage. She said that is an area that is read quite a bit; even online it is read a lot. She said as a resident, she understands what is being said that the newsletter sometimes gets dropped down on the counter as something to get to later; she gets it – people are busy, but, as Mr. Kaufhold stated, if residents want to know what’s going on, they are going to look through the newsletter even if they skim it. She said you could put something on the outside like look inside for upcoming zoning changes so it’s right in front of them as soon as they get it. She said its part of the communication; we are putting a lot of things out there and it’s also about conserving the dollars. She said everyone on the Planning Commission is in a different pocket of the community you might say, not just where we live but also in the groups which we maneuver through and we are active with; there are different age groups with different experiences and backgrounds. She said from her point of view of being involved in certain organizations, we think it’s your job and our job, as being appointed to this Planning Commission, to conserve our money whenever we can, so when things came up at our meeting that’s where part of us felt we were going with this and liked the recommendation the City Manager had given to handle the communication piece of it. She said we have a great repore with Dayton Daily News in the neighborhood section, they put things in there and she’s sure we can communicate it to make sure residents know what’s going on. She said Council members are out there all the time, a lot of us are out there all the time, and we can make this work as a community and still save some dollars. She said if you truly feel the newsletter is not getting read, then save some money and put it online. Mr. Kaufhold agreed and said if it’s not doing any good then why do it?

Mayor Flaute asked if we could just notify those who are going to have a huge change; would that save staff time and help the situation. Mr. Chodkowski said it would be a less cumbersome and less expensive process than the general mailing but if the concerns expressed by Mr. Smith and Mr. Schock are to meet the letter of the law as it relates to notification at the Planning Commission level then no that would not accomplish that task. He said again, if it is the will of Council that everyone receives a notification, we are more than happy to do that. He said from his perspective, he evaluated all of those options and all of those items we as staff have to review and take in to account in the decisions we make and this was the best alternative to that very large, expensive, and cumbersome process to accomplish what this Council and Planning Commission set out to do almost two years ago. He said so it matters not.

Mr. Fullenkamp said part of the issue you are saying is to compile the mailing list; it’s a big task. Mayor Flaute said we have the mailing list; we need the owners. Mr. Fullenkamp said if the mailing list is there, we are assuming it is okay for the newsletter. Mr. Chodkowski said the newsletter goes to residents; it does not go to property owners; so even with the newsletter there will still be a portion of property owners that will not receive notification. Mayor Flaute said the way he understands it the cumbersome part is you have to identify every parcel that is around you that’s being changed. Mr. Chodkowski said there are several pieces of information that a public notice can contain; the simplest form is a letter that says we are rezoning property and your property is subject to a rezoning, call us. He said in the past what we have done is this parcel, parcel ID# -------, commonly addressed-------, is currently zoned “x” and is being considered to be rezoned “y”, if you have any question, comment, or concern, call us. Mayor Flaute said to do that would take months to do that for every parcel in our city.

Mr. Schock said this is a little history lesson, back in 1994, he chaired the zoning board to compile a large zoning book and Miami Valley Regional Planning Commission was there overseeing to make sure we did it correctly. He said when that zoning book was adopted by the first Council, there were 10 different zoning changes done because we can change up to 10 different ones without notification and nobody knew about it. He said when the Council accepted that book 10 of them changed; it’s something to think about because we are allowed up to 10. Ms. Grandjean said at this point it’s the city’s ordinance. She said 10 is the trigger for Council at which individual notification does not need to be sent, so when Council holds its public hearing, individual notifications do not need to be sent if more than 10 property parcels are involved.

Mayor Flaute said so would a compromise be that we just send out a letter to everybody that says your property is being rezoned, please call the city. Ms. Grandjean said it should say may be rezoned. Mayor Flaute said we could hire a temp for a week because they are going to be inundated with phone calls and that’s a tough thing to deal with. Mr. Smith said we are still going to spend the money for a first class stamp. Mayor Flaute said right but you’re not going to spend the 3 or 4 months or whatever it takes to get every personal property and tell what the change is on every personal property; that’s what he thinks is the big expense. Mr. Smith said you’re talking about 10,000 homes which is potentially 10,000 calls coming into city hall. Mayor Flaute said that’s true but the option is to write everybody a specific letter that says this is the change we are going to make and please call us if you have any questions – the city would still get a bunch of calls. He said at least this way we’ve let everyone know there is a change and they have a chance to call and ask what their change is.

Ms. Campbell said why spend all that money when you can just put it in the Thursday neighborhood section like Mrs. Denning said and pay a small amount. Mayor Flaute said because they are saying that’s not good enough. Ms. Campbell said well at least they would know about it and can call. Mayor Flaute said he agreed. Ms. Campbell said why spend more money if you don’t have to. Mrs. Lommatzsch said because it’s the law; it’s the law in this city to notify people when their property is being affected by a governmental change. She said the law states you have a right as a resident and a tax payer and she cannot believe with tax records and with the records of this city that it takes that much effort to identify the property owners. She said if I’m a property owner and don’t get the newsletter then I’m going to be really ticked off.

Ms. Campbell said why they are even changing it. Mrs. Lommatzsch said she understood why it’s being changed; it’s a tool but there is absolutely no rush to do that. She said we don’t have any big corporation or any big business knocking at our door saying if we don’t change this ordinance and fix the zoning, they won’t come to Riverside. She said there is no big rush to do this and to not do it right after the debacle we had last fall with the Lily Creek issue and the residents getting last minute information or no information. She said she thinks it’s just not smart as city employees, which you all are, to ignore the law. She said she is fiscally conservative when it comes to spending money but sometimes there are things you have to do that are the cost of doing business and following the law in the charter and the ordinances is part of the cost. Ms. Campbell said she agreed but they were talking about a different way of doing it. Mayor Flaute said right, can we follow the law and still not….. Mrs. Lommatzsch said you want to bend the law, not follow the law, and laws aren’t made to be bent.

Mr. Smith said he agreed with Mrs. Lommatzsch.

Mr. Curp said he believed that no matter what means we used to communicate, this office is going to get telephone calls. He said if we put a generalized article in the newsletter there are going to be a lot of people that want to know what this is about and how it is going to affect them. He said whether you do it with the newsletter or a generalized letter that goes out first class to every property owner, this office is going to get phone calls and it’s just a matter of how many calls you get based on how many people read which piece of media. He said the other thing is he’s sure we can get a record on CD in some kind of mailing format of all the property owners, parcel numbers, and their mailing addresses from the County Auditor; that’s the business they are in. He said any mailing house including the one that sends our newsletter can take the CD and handle all the addressing for us. Mayor Flaute said that’s true but the problem is the letter is going to have to be tailored specifically to each person and that’s what’s going to take the time; not the mailing. Mr. Curp said maybe it does and maybe it doesn’t; the question that came up earlier was in the provision in the zoning code that states you proceed this way but if you err along the way in handling the notification, the courts are not going to overturn the action. He said there may be a way you can balance that. Mayor Flaute said with a more general letter. Mr. Curp said sure. Mr. Fullenkamp said and still get the transparency. Mayor Flaute said he was kind of leaning towards that.

Ms. Gray said the spirit of the law is a first class letter and the second part of that is if a letter is lost in the mail – that’s what that is talking about. She said if accidently you didn’t get your letter, it’s not going to be overturned; it’s not saying “or”. She said this is our law; first class. She said all you have to do is put on the website what it means to change from an R-3 to an R-4 and refer people to the website in the letter. She said try to get away from the 10,000 phone calls by putting something up online because you are going to get the same questions over and over. Ms. Campbell said not everybody can go online. Ms. Gray said more people have computers than get the Dayton Daily News. Ms. Campbell said there are a lot of elderly people out there that don’t even know how to use a computer.

Mayor Flaute said he’s still thinking a general letter and he’s getting the sense that would be legal.

A motion was made by Mr. Smith to go with a generalized letter in accordance with the code directing people to the website or to call city hall for information about the proposed zoning changes. Mr. Schock seconded the motion.

Mr. Fullenkamp said he thought we could also have the article in the newsletter that addresses the same thing that is on the webpage. Mr. Smith agreed. Mr. Fullenkamp said for people who don’t get the newspaper or don’t use the website.

Mayor Flaute asked the City Manager if that helped staff a little. Mr. Chodkowski said as Mr. Curp indicated the actual mailing list will not be hard to come by and provided we go with the more basic public notice will be relatively easy. He said the problem is going to be all of the timing requirements; while the phone calls will not be an issue and while the assembly of the notices will not be an issue, it’s the timing. He said we will get the list, move the money where it needs to be, and once we get all that set up – everything is reverse engineered because the code impacts several things, most notably, code enforcement. He said the sections for which we cite people in code enforcement are going to change. He said we can implement at a certain date but then we have to pull back all the notices we have that go on the windows or the twist ties on the door knobs – all those have to pulled back and reordered which we can’t do until we know the code has been adopted and the numbers have been confirmed. He said those are all things we have to take into consideration and those are all things we took into account in this office not because we are attempting to circumvent the code but because we have the operations of the city to maintain and we want to do so in the most effective and efficient manner. He said everyone has a different understanding of what the intent of the law is and he thinks that has been debated enough this evening. He said at the end of the day, will it delay the process – yes; will it delay the process significantly – no; how we implement the incoming code to what we do is what is going to affect the actual enactment date of the UDO.

Mr. Smith said if we have our hearing and get things finalized by the end of September or first of October that will give them plenty of time to order the paperwork changes. Mr. Chodkowski said to keep in mind there are a lot of timing requirements and assuming you do this back to back it’s at least 90 days.

Ms. Grandjean said she would just like to note that she believed the general mailing to everybody notifying every affected land owner meets the letter of the law. She said the letter of the law does not say you have to tell them what their current zoning is and how it’s going to be changed so she does believe this will meet the letter of Riverside’s law. Mayor Flaute thanked Ms. Grandjean and said we needed her here tonight.

With no further discussion, a roll call vote was as follows: Mr. Smith, yes; Mr. Schock, yes; Ms. Campbell, yes; Mr. Curp, yes; Deputy Mayor Denning, yes; Mr. Fullenkamp, yes; and Mayor Flaute, yes. **Motion passed.**

Mayor Flaute thanked the Planning Commission for all they do. He recognized Mr. Chuck Childers, Chairman of the Board of Zoning Appeals, and asked if there was anything he would like to bring forth in our discussion with the BZA. Mr. Childers said he thought the BZA was moving right along; the city does need to get someone to help out Mr. Murray. Mayor Flute said we are working on that.

Mr. Curp said he reads the minutes and he is impressed with the regimen the BZA goes through to hear and decide their cases – researching the code and all that stuff. He said he is impressed and they are doing a good job. He said the Planning Commission is doing a good job too but he’s impressed with what the BZA is doing.

Ms. Grandjean said she certainly seconds what Mr. Curp is saying and it’s very true, they are very diligent and hard working. She said she believes their decisions are great decisions and she thinks they take their responsibilities very seriously. She said we have an update session we are planning on the 10th reviewing legal issues and procedural matters because they want to keep informed and make sure they are following the law. Mayor Flaute asked if Council is invited to that, something we should be attending. Mr. Chodkowski said the meeting in question is in relation to the Property Maintenance Appeals Board which is comprised of the Chairman of the Health & Safety Commission, the Chairman of the Planning Commission, the Chairman of the Board of Zoning Appeals and two members of the public. He said that is the group that addresses the issues where we board up properties as a result of ongoing zoning violations of a structural nature or where we have criminal activity. He said they recently heard a case and while it was adjudicated appropriately there was some concern about the process overall and since the Property Maintenance Appeals Board doesn’t meet on a regular basis, credit to the Chairman, Mr. Childers, he wanted to make sure everyone was brought back together and properly advised of the things they are supposed to consider when they make their determinations as a board. He said to the extent that there will be membership there from these bodies the training is more regulated to the Property Maintenance Appeals Board and how they operate. Ms. Grandjean said she apologized; it is the Property Maintenance Appeals Board and Mr. Childers chairs both.

Mayor Flaute said that’s good to know that is coming up. Mr. Chodkowski said the invitation to Council will be in his Manager’s report coming out tomorrow. Ms. Grandjean said she would appreciate knowing who is coming because she is going to have materials and she’d like to have extras, so please send her an email or let the City Manager know how many sets of materials. The training session is Thursday, May 10th.

Mayor Flaute thanked the members of the Board of Zoning Appeals. He asked if there were any members of the Multimodal Transportation Commission present. The clerk said she received an email from Mrs. Lori Luckner that stated they were having trouble getting a representative from the commission available for tonight’s meeting and Mrs. Luckner apologized nobody could be here. Mayor Flaute thanked the clerk and said if they have something, he’s sure we would here from them. Deputy Mayor Denning said it is a very hard working committee and they are currently working on a complete streets plan to say what we should be doing to what streets; streetscapes, bus stops, and all that. He said the project is ongoing and keeps moving.

Mayor Flaute thanked the board and commissions members for coming tonight and said we appreciate the discussions.

b. Discussion regarding DATV and possible broadcasting of City Council meetings.

Mr. Chodkowski said you all received a copy of my memorandum within your packet and the shorter version is that while there are no large hurdles for the city broadcasting it’s council meetings via public access or DATV or whatever if they so choose; there are some policy considerations and basic operational considerations that Council needs to be conscientious of. He said we do have obligations, things we need to consider from our prospective in meeting other components of the law. He said he tried to provide a summary of those areas of thought so Council would have time to consider those in helping you in the decision making process on what guidelines to establish if they choose to move forward. He said this is good information in summary from the memo that was provided by Ms. Grandjean as well as the communities that responded to his email questions on the City Manager’s Listserv.

Mr. Fullenkamp said he understands it is mostly a public records issue. Ms. Grandjean said the legal issues would be public records; what is a public record and what will the retention schedule be, that retention schedule being how long you keep anything that is created; any document or video or DVD created as a result of that taping. She said the retention schedule has to be approved by the Ohio Historical Society so our public record retention schedule would need to be amended in order to address that. She said the other issue would be who owns the video; it’s more of a contractual issue but would need to be addressed.

Mr. Fullenkamp asked why there would be an ownership issue if it’s a public record. Ms. Grandjean said if DATV is creating the video perhaps it belongs to them; she doesn’t know what their actual contractual positions are and if it’s still a public record because it was created here. Mr. Fullenkamp asked if it was still a public record if the city doesn’t sanction it. Ms. Grandjean said no; if a TV station shows up here and records part of a proceeding, it doesn’t become a public record and it doesn’t belong to the city.

Mayor Flaute said so what you’re saying is DATV could do that. Ms. Grandjean said she thought DATV didn’t really want the videos and she thinks they want them to belong to the city. She said they are performing a public service; make the recording but don’t keep archived copies and it wouldn’t be their responsibility to do that. Mr. Chodkowski said DATV’s presence here would be sanctioned by the city making it a public document.

Mr. Fullenkamp asked why we would have to sanction DATV to be here. Ms. Grandjean said that’s the only way they are going to come and record the council meetings. Mr. Fullenkamp asked how DATV differed from an individual doing the same thing, is there a different set of rules for DATV than just an individual that would come in. Ms. Grandjean asked if he meant for a public record. Mr. Fullenkamp said yes. Ms. Grandjean said a public record is something that a governmental entity creates in the course of doing its business. She said if DATV is coming here and filming then it doesn’t become a public record until they provide the DVD to the city. Mr. Fullenkamp said so if they gave the DVD to someone else – an online publisher or something… Mr. Chodkowski said he thought the issue goes back to more importantly why is DATV here; if they are bored and need space time and they just show up on their own accord – that’s them. He said if they are here because we invited them to make an official recording of our meeting now it is a public record. Ms. Grandjean said we will have contracted with them; they have a contract that authorizes them to make video tapings or live tapings of city council meetings, so they are doing it for the city and they will provide the city with the recording. She said when the city is provided that recording it is now a public record.

Mr. Fullenkamp said the way this started is Mr. Loy, who is associated with DATV, approached more as a resident than as a volunteer of DATV; so what you are saying is if he comes in as a resident there’s no requirement. Ms. Grandjean said if he were here recording right now, he wouldn’t be creating a public record; he’s creating a record for himself for whatever he wants to use it for. She said if the city contracts with DATV and says record our meetings and give us copies, that’s now a public record.

Mr. Schock said one thing that’s cutting a fine line here if he remembers correctly, Councilman Fullenkamp asked Mr. Loy to come here. He said by a council member asking him to come here, that could be the fine line of a public record. Ms. Grandjean said it’s different than if a Dayton Daily News reporter were here; if a council member says we’d like for you to cover our meetings that doesn’t make his notes a public record. She said it’s the fact that they are doing it for us and giving it to us. Mr. Schock said it has to be the majority of council to approve it; it can’t be one council member saying come and record our sessions, does that mean it’s a public record then. Ms. Grandjean said if it’s been given to the city and the city keeps it, it is a public record. She said being a public record is not a big deal; you wouldn’t be recording the meetings if you didn’t want that to be public record. She said it’s just a procedural thing that we need to make sure the proper procedures are written up and followed.

Mr. Curp said another example might be a situation we’ve seen over the years where local governments of one sort or another such as school boards or municipalities contract with themselves to do a job search for an executive. He said they do that in an attempt to keep the resumes out of the hands of the news people but the resumes are considered a public record in the State of Ohio so it doesn’t matter anymore who has the physical custody of the record whether it’s the local entity or the agent. He said the agent is acting on behalf of the local governmental unit and the courts have ruled those are public records. He said just because you have an agent doesn’t shield you from the records being public.

Mr. Smith said before we enter into a contract with DATV or whoever, at this point they are a volunteer. He said once we enter into a contract doesn’t that obligate us to pay them to be here as opposed to a volunteer. He said what if they show up this meeting and in two weeks no one is available to come in and tape. Mayor Flaute said that’s his question; we aren’t going to have a contract with them are we? Ms. Grandjean said they have a written agreement. Mayor Flaute asked if they were going to ask us to sign an agreement. Ms. Grandjean said she believed so.

Mr. Loy said he is proposing to do this as a volunteer and he is an independent producer with DATV. He said he actually produces and broadcasts from their church which is here in Riverside and he is a resident of Riverside. He said he is just offering his services free of charge; he brings in his equipment, sets it up, records the meeting, and DATV would broadcast it for him. Ms. Grandjean said and if he doesn’t show up there’s nothing we can do. Mayor Flaute said exactly. Ms. Grandjean said with a contract we would probably have to pay someone and specify what would happen if they didn’t show up. Mr. Loy said he reset his schedule to make Thursday nights available and there shouldn’t be anything getting in his way. He said he would also actively look for other people to help him in this event; either employees of the city or other volunteers within the city that would help him with this.

Mr. Chodkowski said the issue is at what point in time does he, doing what he wants to do as a citizen, and our enhancing what we do to assist that, become blurred. He said he of his own free will volunteers to do this and is not creating a public document but then at some point in time it would be better if …then all of a sudden; if Mr. Loy is volunteering of his own accord, we don’t have an obligation and we don’t have an agreement, it’s being done for Mr. Loy’s own interest, then it doesn’t affect us. He said if all of a sudden it would be nice if we had a microphone for public comments or microphones for staff, now we would be incurring costs and expense to facilitate so at what point in time does our commitment to helping a volunteer become acts that could be considered a partnership.

Ms. Grandjean asked Mr. Loy what he planned to do with the recordings. Mr. Loy said he would give them to council; they would get a copy and he would have a copy for DATV. Ms. Grandjean said there would be an argument to make that his is a public record as well but we would have our own public record.

Mr. Fullenkamp asked if it would be easier if Mr. Loy didn’t give us a copy. Ms. Grandjean asked what is difficult. Mr. Fullenkamp said he wasn’t sure; it looks like if the city gets their hands on a copy it has to be held as a public record. Ms. Grandjean said retention is an issue; do we want to put them on our webpage – it’s a public record there.

Mayor Flaute said the problem is we are planning on spending $1,600 for this volunteer to do what he wants to do well. He said the City Manager is saying that indicates that we are sanctioning what he is doing because we are spending public dollars. Ms. Grandjean said he’s doing it for us.

Mr. Chodkowski said lets go back to the basic core of the discussion; is the city asking Mr. Loy to record the meetings on its behalf or is Mr. Loy choosing as a citizen with access to telecommunications equipment choosing to do this for himself. Mayor Flaute said option number two. Mr. Chodkowski said okay then we are done; as a citizen Mr. Loy is undertaking this as his hobby and it is his contribution as a citizen to everyone he thinks feels this is important. He said we don’t get a copy of the disc; it’s not sanctioned by the city; he’s not required to be here; and he’s not contractually bound to provide, record, or produce. Mayor Flaute said and we aren’t going to buy anything. Mr. Chodkowski said correct. Ms. Grandjean said and you aren’t going to put it on the website. Mr. Chodkowski said correct. Mayor Flaute said that’s going to be a bad recording. Mr. Chodkowski said if it is strictly for Mr. Loy’s use as a citizen and a volunteer we don’t do anything with it; it is not a public document, it is Mr. Loy’s personal property.

Mr. Loy said there wouldn’t need to be any additional equipment purchased; his cameras do have microphones and this room is not that big that it would cause much of a problem.

Mr. Chodkowski said if you review the minutes from the discussion that we had the last time this came up; it lent itself for us to take away that this was going to be a city sanctioned issue and there was discussion about having to get a microphone and having to tie all that in so that he could record all of it. He said those were all components of the discussion the last time and his memorandum was all based on the belief and assumption this was going to be a city sanctioned event but if he is just a citizen volunteer that just wants to share, we don’t do anything. Deputy Mayor Denning said and we can’t stop him; it would be the same as if somebody came in and wanted to use their home digital recorder and take that down to DATV. He said it is what it is and we can’t stop him but he has no obligation to do it either.

Mayor Flaute asked if he is allowed to do whatever he wants with it. Mr. Chodkowski said it is his personal property. Deputy Mayor Denning said be careful what you do.

Mr. Smith said what about editing; if it’s his personal property the city wouldn’t have any say if he picked and chose what was on the tape. Mr. Schock said if he wants to put a donkey head on the Mayor or elephant ears on me, he can.

Ms. Campbell asked if council could see a preview of it. Deputy Mayor Denning said it’s his. Ms. Campbell said what about the people who can’t get out in the winter time and want to watch the meeting at home. Mr. Schock said that’s up to him; it’s out of our control. Deputy Mayor Denning said we are not asking him to do it and we are not telling him he can’t. Ms. Campbell said she thought it was a good thing.

c. Discussion on Council Authorization of Temporary Promotional Signs in the Right of Way – Law Director Grandjean

Mr. Chodkowski said this item is on the agenda per council’s request to address the issue of whether or not the proposed Unified Development Ordinance as well as the current ordinance be amended to strictly prohibit all non-city-owned signage within the public right of way or to allow any and all signs within the public right of way. He said council has some concerns for and against such provisions and he has provided a copy of the minutes the last time this was discussed. He said the Law Director is here to answer any questions you may have. Council asked the Ms. Grandjean to start the discussion.

Ms. Grandjean said the practice of council has been to do a case by case review of requests to put signs in the right of way. She said the problem with that approach and the reason that it was her recommendation that there be simply a prohibition on signs in the right of way except for traffic related signs is because there is clearly established law that regulation of the content of signage violates free speech. She said that is clearly established federal constitutional law; therefore she thinks a case by case review requiring people to come to you and ask to put their signs up in the right of way, then you review and say we thinks that’s a good purpose, yes go ahead. She said she thinks that’s a problem and the problem will arise when the Ku Klux Klan shows up and wants their signs in the right of way for the apple dunking contest they are going to have at Halloween or whatever and you are going to say no. She said even if that never happens, the mere fact that there is a procedure that requires evaluation of the content of a sign before you decide what to do with it, she thinks is clear violation of law and that’s why she is concerned. She said if you have to read the sign in order to decide what to do with it, its content regulation. She said you can regulate signage as to size, time, place, reasonable regulations; a temporary sign can be regulated because it gets worn and can constitute blight after a period of time, so you can regulate and say it has to be in a certain condition and when it’s no longer in that condition, it needs to be taken down. She said you can’t say it’s only going to be up 7 days before an election and 7 days after. She said her point is if you have to read the sign to decide what you are allowed to do with it then you are regulating speech.

Mr. Smith said we can’t put on time limits. Ms. Grandjean said no, not strict time limits, not on a particular type of sign. She said you can specify that signs made out of a particular material that are temporary and become worn and torn after a period of time, you can regulate the condition but you can’t say certain kinds of signs as approved by council can be put in the right of way; we are talking about temporary signs in the right of way. She said the problem she sees is not that they are put up 20 days before a festival or whatever the time limits are; it’s the very fact that there is an approval process that’s required and some signs can go in and some signs can’t. She said if you are going to allow signs in the right of way, you have to allow all signs in the right of way. She said you might regulate as to size or you might even regulate as to the length of time but you can’t say you are going to review each sign to decide whether or not they go up. She said you can but she thinks it’s only a question of time before there will be consequences. Mr. Smith said he thinks you would have to regulate the time frame because at some point a temporary sign could become a permanent sign.

Ms. Grandjean said you could allow all signs to go in the right of way but that would create visual clutter. She said she is talking about private vs. public; people can put what they want within reason in their yards. Mr. Smith said this will encompass garage sale signs, festival signs, fish fry signs, etc.

Ms. Campbell said but they can put the signs on private property just none in the right of way. She said if you allow one, you have to allow them all, right? Ms. Grandjean said you can allow them by some rule that doesn’t require you to read the sign but when you are saying the Lions Club can go or St. Helen’s can go well then you’ve got to read the sign and you are regulating speech; you are regulating the right of that entity to convey it’s message.

Mr. Fullenkamp asked if you could permit the signs. Ms Grandjean said you could if you wanted all the visual clutter in the right of way. Mr. Fullenkamp said what he’s saying is can we have them come to us for a permit. Ms. Grandjean said not based on content. Mr. Fullenkamp said based on you want to put a sign up but you have to come to us. Ms. Grandjean said you would have to come up with a standard, what would be the standard for deciding they could. Mr. Fullenkamp said you would just have to come and get the permit; we aren’t going to say yes or no, just that you need to have a permit. Mr. Smith said he thinks you would have to have rules as far as how far from the corner, how big it’s going to be, and how long you are going to keep it up. He said we may want to charge per sign per location. Mr. Chodkowski said that is a regulatory nightmare. Mr. Fullenkamp said he’s not suggesting that’s the way we go; he’s probably leaning towards what Ms. Grandjean is saying.

Mrs. Lommatzsch asked if this included political signs. Ms. Grandjean said yes; not in the right of way. Mrs. Lommatzsch said if there are no signs, she understands but if you allow all signs then you would have to allow political signs. Ms. Grandjean said right and that’s exactly where the controversy is likely to arise; you are allowing the Lion’s Club or St. Helen’s or whoever to put up signs but if somebody is running for office or somebody is wanting to promote a referendum and they aren’t allowed to put their sign in the right of way.

Deputy Mayor Denning said he would like to read Huber Heights’ “Signs Permitted in the Right of Way during Holidays and Festivals”: *Section D Permit - all public and private nonprofit organizations desiring to erect signs in the public right of way shall be required to obtain a no fee permit from the Zoning Office subject to the aforementioned approval of the City Engineer*. *No other type organization, business, company or individual shall be potentially allowed to erect such signs.* He said basically what it says as far as the City Engineer is that signs are put up in way so as to not obstruct traffic and things like that. He asked Ms. Grandjean if that would still be wrong. Ms. Grandjean said she thought it was very vulnerable to challenge. Deputy Mayor Denning said his side of the debate is we are a community and we need to be a community; to be a community we need our organizations to be able to do the things for our community. He said to limit their ability to advertise, St. Helen’s Festival, the Lions Club Sale, things like that also limits us being a community. He said he understands the business aspect and taking a conservative view of the situation but he also understands trying to be a community and being able to help our organizations, schools, baseball, soccer, all those groups need the ability to do that. He said to say the signs can be put in residential areas – advertising the Mother’s Day Flower Sale in his front yard probably isn’t going to be a big sell for everybody. He said he understands if we are going to regulate them, we need to regulate them a little bit but he’s willing to take the chance that we are not going to have a problem. He said he would rather see us come up with a permit to say this is what we allow and this is the area of groups we are going to allow; then if somebody comes to fight us, we’ll fight the fight when it’s time.

Ms. Grandjean said she thinks what’s important is if that’s the case then council is going into it with their eyes wide open and understand what liability could be faced by the city because it would ultimately be the tax payers who would pay the price. She said she could perhaps come to council with some examples of what kind of costs cities have incurred as a result of awards made against them for successful challenges to their sign ordinances where they end up not only paying damage awards but also paying for their own attorney fees and paying attorney fees for the prevailing party which can run into the hundreds of thousands of dollars. She said as long as council goes into it understanding what the risks are, she’ll be glad to provide additional information so you feel you can actually weigh those competing interests and come up with what serves the city’s best interest.

Mr. Schock said he would be interested in the additional information because he would like to see what dollar value council is looking at. He asked if she could do case references and how much was awarded. He said somebody mentioned one time in the last meeting; didn’t the City of Fairborn go through something similar to that. Mr. Chodkowski said they are also in litigation right now with Mr. Lewis and GBR Concrete. Ms. Grandjean said Tipp City had one; a few hundred thousand dollars is what it cost them for having a sign ordinance that was found to be constitutionally invalid.

Mr. Schock said so in your professional opinion do you feel we are next on the target. Ms. Grandjean said no, she doesn’t think anyone was gunning for Riverside. Mr. Chodkowski said his concern would be that for lack of better terms, we would be blanket bombed. He said it is not uncommon right now for municipalities to receive very ubiquitous records requests for police logs for arrests made between January 1978 and January 1979 and what they are doing is specifically looking to see if you are in violation of the records retention law so that they can file a claim for damages because you don’t have those records even though your records retention policy may say so. He said municipalities are already responding to those issues and those types of requests and it’s only going to be a matter of time until there is something next on the list and you can’t help but think that somebody is going to stand within the public right of way exercising free speech and they will be able to find a community that will try to suppress that free speech. He said is it going to be the Ku Klux Klan – maybe; is it going to happen tomorrow – probably not; but its coming and more importantly, we are going to be on the losing end. He said he didn’t think Ms. Grandjean would disagree; he didn’t see how we were in a defensible position. He said the issue is going to be how fast we give in.

Ms. Grandjean said there are actually attorneys that hunt and look for cities that have unconstitutional or problematic sign ordinances as there are attorneys that hunt for cities that haven’t kept their records properly. She said she knows of a city that has a red light camera ordinance and there has been a request made for every single photograph that was taken but she doesn’t think they kept them. She said there are a handful of attorneys that are doing these things – sign ordinances and public records are a goal line. She said the public records hunters have received a set back because there has been a court case that said, wait, hold it, you weren’t harmed – yes the statute says you don’t need to be harmed but your just goal lining and we’re not going to let you have the $500,000 award you are entitled to because they didn’t keep every single paper. She said cities are finally receiving some protection there but that’s not yet the case on sign ordinances.

Mr. Chodkowski said Deputy Mayor Denning had a concern earlier about how these signs may be placed – the Lions Club signs in a residential district; the fact that they would be on private property while we cannot legislate or regulate content there are other things we can do to facilitate those organizations being able to put temporary signage on those properties in accordance with the code. He said all they have to do is talk to the Manager at Bob Evans or at Speedway. He said we have language in the code for no cost permits to nonprofit organizations, you can establish the limitation issue because they are temporary signs, you can establish number; what we are saying under these provisions is they are not in the right of way, they are on private property. He said these are all organizations that have sponsorships from the community, so he finds it fairly difficult to believe that Bob Evans is going to shell out several hundred dollars to put their logo on soccer jerseys and baseball jerseys but they are not going to allow a sign in their yard that says sign up for baseball over the next two weeks.

Ms. Campbell said what about yard sale signs, do you have to get a permit for that. Mr. Chodkowski said you still have to be permitted for yard sale signs within the city and those are excluded from being placed in the right of way.

Mr. Schock said what about putting a disclaimer on the bottom of the resolution – any litigation on us; don’t look at us look at the agency that wants to put the signs out. Ms. Grandjean said you cannot insulate yourself from the law. Mr. Schock said we can’t say “if any litigation comes forth because of your sign, you assume full responsibility of the litigation”. Ms. Grandjean said she would have to think this through but she supposed you could have indemnification agreements with the entities; that would really discourage the nonprofit to put signs in the right of way or any where else if they would end up possibly being responsible for hundreds of thousands of dollars in damages and of course they wouldn’t even have the resources to pay. Mr. Schock said it would get the signs out; how can you take money off somebody who has nothing. Ms. Grandjean said the city would still be liable for it. Mr. Schock said they would be the first; the city would be the second; and on down the line. Ms. Grandjean said that would have to be the legal affects.

Deputy Mayor Denning said so if we make these directional signs and put arrows on the signs, are we going to be legal. Ms. Grandjean said the Lions Club sponsors turning right? Deputy Mayor Denning said no; the Lions Clubs gives directions to where they are selling flowers and you put an arrow on it – it’s a directional sign. Ms. Grandjean said as defined, she thinks it means something a little more official such as stop signs. Mayor Flaute said so what Deputy Mayor Denning is talking about is just a personal sign and you’re saying that’s not allowed. Ms. Grandjean said it says directional signs. Mr. Schock said only the city can put up directional signs. Mr. Chodkowski said no; McDonalds has signs that say “enter here” or “exit here”; those are considered directional signs. Mr. Schock said but are they in the right of way; if they are they come see the BZA for a variance because they have to regulate the size. Mr. Chodkowski said Section 1181.15 (b) Prohibited Signs – *no signs shall be placed in any public right of way except publically owned signs such as traffic control signs and directional signs, and other signs which may be authorized by council*. Deputy Mayor Denning said so what you want us to do is take the approval of council out. Ms. Grandjean said it’s not a personal preference. Deputy Mayor Denning said no, you’re saying to be more conservative and limit our liability. Ms. Grandjean said we were talking about the literal language of the law and she thought this was literal as the courts have applied it across the country; it’s not a few stray courts – city after city has run into trouble across the country. She said almost everyday on her Municipal Lawyers List there are questions about signage; people asking how they can comply with the various court rulings. She said it is evolving against regulation so yes, she thinks it is problematic, any kind of individualized review that is based on content.

Mrs. Denning said when this sign ordinance originally went into effect there were so many organizations that do put their signs in the right of way that were approached and assured by council at the time it would not affect their signage in order to promote their events that do come back and benefit this community as a whole whether it be fundraising because the money is needed to buy food for needy family baskets – Thanksgiving, Christmas – you know all this stuff, she didn’t need to remind council of all the stuff the community does for them. She said secondly, she would hope that as a citizen and also someone who has kids that went through the different sports organizations and all that stuff, there are times when our residents do not know what is going on in our community unless there are signs. She said she hoped they would find a way to support the organizations that have been supporting this community for 30 plus years and support the organizations so parents know what is going on. Mayor Flaute said Mrs. Denning knows the majority of council, if not everyone, wants exactly what she does and when we said that, we had a different set of rules. He said we are hearing now something that we hadn’t heard much about before and he believes the choices are very limited. He said he thought they had one of two ways to go. Mrs. Lommatzsch said you can just take off all restrictions. Mayor Flaute said either no signs or all signs.

Ms. Grandjean said would you like to see the additional information. Mayor Flaute said do we need more information. Mr. Schock said yes. Mayor Flaute said what do you want to know; how many hundreds of thousands of dollars we are going to be liable for. He said he didn’t think we needed to know that – he doesn’t want it to be $10 much less a hundred thousand dollars. Deputy Mayor Denning said you just agreed to spend $7,000 to send letters out. Mayor Flaute said he didn’t think they needed to put the city in jeopardy of a lawsuit, not only for the money but also the bad publicity; he doesn’t want to spend one cent on liability from having signs – that’s his opinion.

Mr. Smith said he thought before we have a vote, we need to look at how we can regulate those signs. Mayor Flaute said the Law Director is saying we can’t, so why do you want more information. Mr. Smith said just to regulate the amount of time that they are up; we can regulate signs. Mrs. Lommatzsch said those regulations are already in the code.

Mr. Curp said what he heard from the Law Directors comments was while we can regulate size or time it has to be uniform across the board for all signs; it doesn’t matter whether they are commercial signs, noncommercial signs, political signs, or religious signs.

Mayor Flaute said he thinks they are hearing loud and clear that we have two choices. Mr. Schock said sit on it. Mr. Smith said he didn’t see how they could sit on it because the agenda has resolutions for temporary signs and we need to make a decision on what we are going to do.

A motion was made by Mr. Fullenkamp to prohibit all signage according to what Ms. Grandjean has told us about the public right of way except for signs that are allowed in terms of speech. Mr. Curp seconded the motion.

Mr. Chodkowski said the motion as he understands it is council would like staff to amend Section 1181.15 (b) of the codified ordinances to prohibit signs placed in any public right of way except publically owned signs such as traffic control signs and directional signs. Mr. Fullenkamp said yes. Ms. Grandjean said that would take an ordinance with a first and second reading.

Mr. Fullenkamp amended his motion to have the Law Director to bring forth an ordinance that reflects what the City Manager just stated.

Mayor Flaute asked the clerk to read back the motion. The clerk said “to bring forth an ordinance to prohibit all signs in the right of way except publically owned signs and directional signs”.

Deputy Mayor Denning said we make resolutions on a regular basis to give public funds to organizations if it is in the public interest so would we be able to put signs up the same way. Ms. Grandjean said to say it is in the public interest to put the sign up? Deputy Mayor Denning said yes. Ms. Grandjean said it is free speech vs. appropriation of public finds; totally different issues.

With no further discussion; a roll call vote was as follows: Mr. Fullenkamp, yes; Mr. Curp, yes; Ms. Campbell, yes; Deputy Mayor Denning, no; Mr. Schock, no; Mr. Smith, no; and Mayor Flaute, yes. **Motion passed.**

**ITEM 7: RECESS:** The Council took a recess at 7:54 p.m.

**ITEM 8: RECONVENE:** The meeting was reconvened at 8:08 p.m.

**ITEM 9: PLEDGE OF ALLEGIANCE:** Clerk of Council Mary Ann Brane led all those in attendance in the pledge of allegiance.

**ITEM 10: MINUTES: Consider approval of the minutes of the April 19, 2012 council meeting.** A motion was made by Deputy Mayor Denning to approve the minutes as written. Mr. Smith seconded the motion. All were in favor; none were opposed. **Motion passed.**

Mayor Flaute said before the presentations get started, Mr. Schock did tell me before the meeting that he has a horrible toothache and the only reason he came in was for the special meeting we just had. He said Mr. Schock needed to get home to take medicine which is why he is no longer at the meeting. He asked the City Manager if council had to excuse him. Mr. Chodkowski said the clerk will note that Mr. Schock was absent for the business session which began at 8:08 p.m.

**ITEM 11: PRESENTATIONS:**

1. Mayor Flaute with reading of the 2nd National Kids to Parks Proclamation

Mayor Flaute said as many of you may remember last year was the first time we had this. He said many political folks, including Mrs. Obama, are trying very hard to get our kids out playing in the parks. He read a proclamation (copy attached) declaring May 19th, 2012 is National Kids to Parks Day.

1. Bob Murray, Economic Development Director – Airway Tax Increment Financing District

Mr. Chodkowski said this presentation will be made by Mr. Murray with respect to the proposed Airway Shopping Center Tax Increment Financing District. He said this is an item that has been briefly referenced at Council before as well as being included in the Manager’s Report. He said it is a more detailed version of the presentation made at Planning Commission back in December. He said staff will be bringing forth legislation for council to consider at the next meeting. He said there was some concern that council was not fully aware of the long term plans with respect to the TIF District so we wanted to provide you with this presentation so that you had ample information prior to the legislation.

Mr. Murray gave a Power Point presentation (copy attached) outlining Tax Increment Financing and the proposed Airway TIF District.

Mr. Murray said what we’ve been trying to do for some time is establish a Tax Incremental Financing District around the Airway business district. He said the legal definition of a TIF is it is an economic development tool that municipalities can use to stimulate private investment and development in targeted areas by capturing the increased tax revenue generated by the private development itself and using the tax revenue to pay for public improvements and infrastructure necessary to enable development. He reviewed the use of TIFs: finance public infrastructure, acquire land, demolition, burying utilities, planning costs, sewer expansion and repairs, curb and sidewalk work, storm drainage, street construction, street lighting, parking structures, traffic control, bridge construction, water supply, environmental remediation, and park improvements. He said we can do a variety of these in the Airway Business District.

Mr. Murray reviewed the process: the city designs a TIF area or Tax Increment District (TID), we have a public hearing within 30 days of adoption of legislation, the city defines the public purpose of the TIF, the city establishes a tax base year that locks in the current real estate values, service payments are collected in lieu of taxes, and the service payments are used to fund the public purpose. He displayed a graph which shows what happens with a TIF and explained that any incremental value increase that results in the district is used to cover whatever public improvements are done. He said we maintain the level to the county, schools, etc. and once the TIF expires the revenues for everyone go up.

Mr. Murray reviewed TIF Financing Methods: city issued bonds, developer acquires debt – what is being done in the Brantwood development, no debt is issued called a piggy-bank TIF which is what he is proposing for the Airway District, or a combination financing which combines a TIF plus an assessment. He said the school board does get involved if the TIF is greater than 75% and/or with duration longer than 10 years. He said if the TIF is greater than 75% the school board may disapprove the terms, propose a percentage of the service payments be made whole, and they may reject the TIF legislation if it exceeds statutory rates and terms. He said TIFs can be established for up to 100% of the service payments for up to 30 years. He said the service payments are the incremental amounts that are held back and go into a pool for the TIF. He said if a building is constructed, instead of paying the taxes as normal to the county, they will actually pay into a bank account the service payment.

Mr. Murray displayed an aerial view of the proposed district which includes 61 parcels with a current market value of $15,386,560. He said the area is outlined in white and is every business in the vicinity of Airway and Woodman. He said every parcel will be a contributor to the TIF and if the business doesn’t increase the value, they aren’t going to contribute and there is no additional service payment. He said the idea is we can use whatever is created and benefit everyone outlined in white. He said any TIF dollars go to any improvements we want to do in that whole area.

Mayor Flaute asked if that was a good thing. Mr. Murray said he thinks it is a very good thing. Mayor Flaute asked why. Mr. Murray said because we’ve got some problems basically along Woodman; it’s not as pedestrian safe as it could be, it’s not bicycle friendly, we have some structural problems with the right of way going in and out, and we actually have a street on private property at the corner. Mayor Flaute asked what the advantage of a TIF would be for the people along Airway. Mr. Murray said the TIF would help us acquire funds to rebuild the infrastructure. He said we can also use the TIF dollars to increase pedestrian safety, make the area pretty or cute, bury public utilities, make the center more attractive, and demolish buildings that are showing signs of deterioration. Mayor Flaute said but you stated those folks are now going to pay their taxes to the TIF and not to the County Auditor. Mr. Murray said people will continue to pay taxes on the base value that is established at the start of the TIF as they always did. He said what we are doing is a public improvement to draw in more economic development to this district; the increased value of the real estate is not paid to the county, it is held to pay for the public improvements. He displayed the graph and explained that the slope represents the increased value which results in increased taxes and that increased value, which the schools have never seen – if we didn’t do the TIF they wouldn’t have benefited anyway, resulting from the TIF pays off the public improvements to get further increases in value. He said once the TIF expires everybody gets a bigger chunk of what was created.

Mr. Chodkowski said think of it this way; in the base year a property is worth $100. He said so the county, the schools, the city, etc. all split that $100 proportionately. He said the following year within the TIF district the property now has a shed on it and now it’s worth $150. He said the county, the schools, the city, etc. all split the first $100 proportionately and the $50 goes to the TIF. He said the following year they add a house and the total amount paid is $200. He said the county, the schools, the city, etc. all split the first $100 proportionately and $100 goes to the TIF. Mayor Flaute said what if they don’t add any buildings but the value of the property goes up to $120. Mr. Chodkowski said then the county, the schools, the city, etc. split the $100 that was established in the base year and the $20 goes to the TIF. He said we will always get the same amount of money that we are getting today through the life of the TIF; all the increased money we would normally get from increases in property value or development would get paid to the TIF and the TIF uses that money to reinvest specifically in that district. He said right now people in Seville or Forest Ridge or Avondale pay their taxes and it all goes into a big kitty; maybe this year we take some of Forest Ridge’s money or some of Seville’s money and spend it in Avondale. He said next year we take some of Avondale’s money or some of Forest Ridge’s money and spend it in Seville. He said here, the money that is generated in the TIF district has to be spent in the TIF district.

Ms. Campbell asked where the TIF comes from. Mr. Chodkowski said council creates the TIF by passing a law that says all of the new tax money after this year for the next 10 years has to be spent in this area.

Mr. Murray said all he is asking council for is to create this as a TIF area. He said what we are going to try to do is enhance the streetscape to just make it prettier and there are some technical things we should do which is increase the right of way as well as correct some drainage problems and things like that. He said it is structural issues and enhancing the streetscape.

Mayor Flaute said to increase the right of way we will have to go to all the property owners and buy property. Mr. Murray said sometimes but we just acquired all the property along InfoCision and the Celtic Academy for nothing; they just gifted that to us. He said we have talked to another gentleman and if things move forward we will acquire a whole corner. He said what we need to show to the business owners is a plan; that we have a future idea and if they want to go along with the future idea, they can contribute. He said what we are trying to do is set a plan in place to make this area better for all the businesses. Mayor Flaute said the motorcycle place doesn’t have room. Mr. Murray said there are technical issues that a TIF can help us solve but we don’t have the money to solve it right now. He said we are creating a TIF so we aren’t hitting the general fund; the idea is not to take current dollars out of our pocket. He said it’s creating a tool that allows us not to hit the general fund. He said we are telling the business owners that we are creating a TIF, putting the money in a piggy bank, and as the money comes available we are going to use it to improve everybody here.

Ms. Campbell asked if we can do that in different areas. Mr. Murray said we already have; Center of Flight is a TIF and we just did one for Brantwood and this will be our third one. He said we’ve done this already; he’s just trying to establish it at Airway.

Mr. Fullenkamp asked if the TIF would include improving Airway Shopping Center’s infrastructure for the out lots. Mr. Murray said it could be either/or; currently the right of way plan we have demands that sidewalks are built. He said so the plan here, if put in place, we demand not only sidewalks but maybe something else, maybe that the sidewalk has to accommodate bikes.

Mr. Smith asked if Mr. Murray could give council some parameters as far as what section of Woodman and what section of Airway. Mr. Murray pointed out the boundaries of Eubanks and Meier on the aerial map. He also pointed out where solar powered bus shelters have been installed and where RTA has granted the city money for additional shelters. Mr. Smith asked if on Woodman the district went from Airway to Bayside. Mr. Murray said yes, taking into account Domescik Realty. Mr. Smith asked if the other boundary off Airway was where you go into the back of the shopping center. Mr. Murray said yes. Mr. Smith said all that area will be in the TIF. Mr. Murray said yes; it’s every business property around Airway and Woodman.

Mr. Murray said he is proposing a 10 year term at 75% of the new values which is well within the ordinance and does not require the school’s permission. He said the objective is to establish a piggy bank TIF which will be spent as it accumulates and to create a streetscape plan for the Airway Business District. He said for the process, all we have to do is pass the legislation on May 17th and we will notify the school board out of courtesy that this is what we are going to do.

Mr. Murray displayed a slide showing sample goals: functionally and aesthetically integrate private development with the public right of way, create a pedestrian friendly environment by requiring construction of improvements that enhance the quality of the environment by increasing safety and convenience, implement an aesthetically pleasing streetscape improvement program that establishes a sense of visual continuity, and establish a cost for placing overhead utility lines into the ground. He said again, these are just some examples. Mayor Flaute asked if Mr. Murray would be going to each business owner with these goals. Mr. Murray said no, these are our goals not their goals. Mr. Chodkowski said we are currently working on some of these based on the goals council established as part of his evaluation; one of those was the aesthetic improvement plan Mr. Curp had suggested. He said we would take some of the concepts and some of the items that will be identified through that and incorporate that as part of the streetscape. He said those are items we could do part of the preliminary work on then hand over to an architect or engineer or designer who would produce drawings we can take to each business to show what we want to do and what the cost will be. Mr. Murray said it’s very much a public relations thing and he thinks they would welcome a plan that shows some future enhancements to this area.

Mr. Murray said we have two TIFs in place right now; Center of Flight (15 acres) and Brantwood (38 acres) and if we put Airway (53 acres) in there, it’s not even 2% of our city. He said we can go up to 30% by legislation and we are at 2%, so this is minimal. He said we have 5,116 acres in the city.

Mr. Murray said what we’ve done in the Multimodal Transportation Commission is to look at the Airway/ Woodman area as the Wright Brothers Parkway. He said what we’ve done already: Mad River Bridge being done by Montgomery County in 2015, Mill and Fill being done by a grant and city reserves in June 2012, Valley/Harshman Safe Routes to Schools in 2012, Beatrice Bus Stops New Freedom Grant (80%) and the mill and fill is being leveraged for the 20% local match, Woodman Signal being done by the developer and we would like to leverage his dollars for additional enhancements to that signal using the New Freedom grant. He said he will be asking council to do the Airway TIF and put that in place to catch some of the improvements we know are happening right now in this business district. He said the one council knows of is McDonalds. He said he has another restaurant looking to expand which will happen shortly and we met with an individual that has a 1 ½ to 2 year time frame on a different parcel and we would like to capture that as well. He said there are a few things happening and if we can gain those dollars we can make it prettier which we hope will increase the value of everything going on around it. He said we also have a bus stop on Woodman; that’s RTA and it will be next week; He said there is a Safety Grant that LJB brought to his attention; it’s an ODOT grant that 100% and we are going to use that on Airway/Woodman as a foundation for the Streetscape Plan. He said next is to establish the Streetscape Plan from the TIF funding which will take an outside contractor and until we have money in the TIF, we wouldn’t go forward. He said he also added the Lily Creek Study because Lily Creek goes right through Airway and maybe there is something we can do on Lily Creek to enhance what it looks like and it’s just another part of what we are doing.

Mr. Murray said basically the next part of the process is to pass the legislation on May 17th and that sets it up. He said it’s a done deal from then, we start raking in the funds.

Mr. Smith asked if 10 years was enough time to capture the funds to make the improvements. Mr. Murray said he didn’t even know what improvements we are looking at right now but establishing a 10 year TIF gets us started and we can always change it. He said once we find out what we want to do we can go out 30 years; lets say we want to bury all the utilities – we are going to need a 30 year TIF for that. Mr. Smith asked if we extended it out five years into the TIF, would they recalculate the values. Mr. Murray said you would establish a new base so we want to do this fairly quickly to have enough to get started. He said he did think there was a lot of room at Airway Shopping Center that could be utilized. Mr. Smith said it seems like a lot of your development would be in the first 10 years. Mr. Murray said absolutely. Mr. Smith said wouldn’t it be smart to look at a 15 year TIF and can we do that without going to the school. Mr. Murray said no; 10 years is the easiest way to go without getting too many people involved.

Mr. Fullenkamp said if we do a 10 year TIF and it expires; if we want to do another TIF, we reset the current values or the tax revenue that goes into the fund. Mr. Murray said yes and we are probably faced with that at the Center of Flight, it has about outlived its usefulness. He said if somebody did go in there, we are not going to get what we should so its time to reevaluate that.

**ITEM 12: ACCEPTANCE OF WRITTEN CITIZENS PETITIONS:** Mayor Flaute advised citizens to fill out a form if they wished to speak about agenda or non-agenda items.

**ITEM 13: CITY MANAGER’S REPORT:**

1. FYI Items
2. Council Request Sheets.
3. Code Rewrite Request Sheet.
4. Council Agenda Calendar.
5. Weekly City Manager’s Report.
6. Memo from Bryan Chodkowski, City Manager, regarding Red Flex Photo Enforcement information.
7. Minutes of the January 16, 2012 Planning Commission meeting.
8. Minutes of the February 28, 2012 Board of Zoning Appeals meeting.

Mr. Chodkowski said you have my report and he would be happy to answer any questions.

Mr. Fullenkamp said he wanted to ask Chief Reiss about the Red Flex situation. He said he would like to see the break down on what types of accidents were at the intersections studied; some of them obviously would not benefit from a reduction using the Red Flex camera enforcement in his opinion, so it would be good to know what the break down is and what is our real gain. He said to him 31 accidents at Airway and Woodman is okay information but what are those accidents. Mayor Flaute said he would like to make sure he gets that report too; he’s already asked.

Mr. Fullenkamp said the other thing is the quality of this study that Red Flex sent us; it doesn’t tell him anything. He said there’s no statistical analysis and we really don’t know much; he looked at some other things online and he will sit in on the conversation if necessary. He said perhaps he should go out and pull up the whole study but the executive summary really doesn’t give sufficient information on how much this is helping or hurting. He said so if he could get a little clarification from Red Flex. Chief Reiss said he’s thinking the place to get information from is the local municipalities that are utilizing Red Flex – City of Dayton, City of Trotwood, and some of the others. He said bear in mind, Red Flex is a company. Mr. Fullenkamp said sure, they are sales people. Chief Reiss said it’s a product and when we partner with them on something like that, they put their best foot forward. He said there were time constraints for him to get some information but the best place to look is through municipalities that work with them. He said in speaking to Chief Beale, he talks in favorable terms. Mr. Fullenkamp said his background is in the scientific validity of these things, and his observation is this isn’t what he would consider a real evaluation in terms of the analysis. He said he is going to look for more information and he will certainly share that with all of council.

Mr. Chodkowski said we would be more than happy to put that together for everyone as part of the next discussion if we can get all the information. He said Dayton keeps information and Springfield is one of the larger communities around here also and he is going to venture that Springfield also has some valuable statistics in relation to impact that Chief Reiss could get.

Mr. Fullenkamp said there are a few studies done by universities and cities are really showing mixed results in terms of the effectiveness and in terms of safety. He said that’s what his concern is; we are selling this as safety and we’re not sure. He said the information he got didn’t convince him and if you want to get him the full study, he would be happy to look at it.

Ms. Campbell said she had asked a question early about payments – 60/40 or whatever it’s going to be, do they get their money right then and there. She said what about the people that don’t pay, do we have to pay Red Flex the money because that could put us in the hole deeply. Mr. Chodkowski said there are two types of standard contracts you can enter into with Red Flex; one is that the City of Riverside agrees to pay Red Flex a fixed amount every month during the contract, so whether or not we collect that in fines, we are still responsible to make that payment. He said the other contractual option is that we come up with a mutual split such as 60/40 or 50/50 or 40/60 and if we collect $1,000 in fines that month, they get their percentage of the $1,000. He said if the following month we collect $50,000 in fines they get their percentage of that. He said they ride the wave with the city. Ms. Campbell asked if we checked with any of the cities that have this because she was told some of them might already be in the red with this. Mr. Chodkowski said he hasn’t spent any time talking with his local counterparts other than from the standpoint that council was taking this step by step.

Mayor Flaute said he definitely agreed with Ms. Campbell that we shouldn’t sign the first contract with them regardless of what the other cities are doing. He said the second one is the only one we should think about.

Deputy Mayor Denning asked if there were any other companies out there that do this besides Red Flex. He said this has to be somewhat of a competitive market; there has to be other places out there and maybe we could actually find a U.S. company if we choose to do this. Mayor Flaute said he wasn’t sure we were ready to move forward with this; it doesn’t have to be Red Flex but he thought the first thing was if we are moving forward.

Ms. Campbell said she thought we needed to check out the option Chief Reiss was talking about so we don’t get ourselves in the red position.

Mayor Flaute said he had one question on the crack sealing; he’s assuming American Pavements got the bid. Mr. Chodkowski said we are still working to determine whether it’s American Pavements or Booher. He said there were three bids and the first two did not bid quantity; they did a visual site visit and based on their field observations they put forth their bid. He said quantities were outlined in the contract. He said the third bidder was the high bidder but was the one that actually bid against actual quantities. He said we are communicating back and forth with American Pavements whether or not they are willing to honor the price they quoted against the quantity required in the contract. Mayor Flaute said so we don’t know yet. Mr. Chodkowski said correct; the legislation will be forthcoming May 17th.

Mr. Smith asked if they gave us an all inclusive price. Mr. Chodkowski said what we bid was several streets based on quantity from previous experience, based on previous contracts and based on conversation with the engineer that it is going to take 5,000 gallons of emulsion to seal the cracks. He said what they did was they went out there and stated they think they can probably do this for $20,000. He said what they should have done was take our quantity plus their labor equals “x” amount of dollars and they didn’t do that. Mr. Smith said so they should have broken the bid down based on materials and labor. Mr. Chodkowski said whatever the particular bid structure was that Mr. Miller asked them to bid on, they did not do that but if they are willing to validate the bid amount stands for that quantity plus labor. He said if they are willing to charge us five cents per gallon when the cost they incurred might have been a dollar a gallon; that’s not for us to determine if that’s what they are willing to do.

Mr. Curp asked if we had a pre-bid conference. Mr. Chodkowski said he didn’t believe so. Mr. Miller said usually on a smaller project of this nature, we don’t have a pre-bid conference. Mr. Curp asked if we did a pre-bid for the towing contract. Chief Reiss said no. Mr. Curp said the question or concern is we apparently had bidders on this one who didn’t follow the requirements or specs. He said we also had bidders on the towing contract that didn’t follow the requirements or specs; he even saw in the local newspaper where one of our bidders in the towing contract who didn’t get the bid here also failed to complete the bid package properly for bidding the Dayton towing contract and didn’t get anything there either. He said he’s trying to figure out if there is something or if we can take a look at; what we are doing to see if we can get bidders to provide the information we are looking for to make our job easier.

Mayor Flaute asked if we were okay with Areomark. Mr. Chodkowski said he believed the back ground check came back okay. He said there was a total of three projects and we didn’t have any issues with any of those proposed and how they compiled their bids.

**ITEM 14: PUBLIC COMMENT ON AGENDA ITEMS:**  Ms. Jan Pitzer of Wake Forest Road said she was a little confused with the whole process regarding the zoning map amendments. She asked if it was going to be similar to what happened with the Lily Creek project where you send out a general letter notifying the public of meetings and then a public hearing. Mr. Chodkowski said yes.

**ITEM 15: NEW BUSINESS:**

 **I. ORDINANCES**

**a. Ordinance No. 12-O-489 authorizing the sale of certain property owned by the City of Riverside to DDC, LLC under certain terms and conditions and declaring an emergency. (FIRST AND SECOND READINGS AND CONSIDERATION OF ADOPTION)**

Mr. Chodkowski said this ordinance is brought forth to authorize the sale of property formerly known as the Riverside Business Park to DDC, LLC under certain terms and conditions previously adopted by this council.

A motion was made by Deputy Mayor Denning to read Ordinance No. 12-O-489 for the first time in its entirety and to approve its first reading. Mayor Flaute seconded the motion.

The Clerk of Council read Ordinance No. 12-O-489 in its entirety and Mayor Flaute asked if there were any questions or comments from members of council.

Mr. Curpsaid he would like to offer an amendment to the ordinance.

A motion was made by Mr. Curp to amend Ordinance No. 12-O-489 by removing the emergency clause. Mr. Smith seconded the motion.

Mayor Flaute said so that would be if council accepts that amendment. Deputy Mayor Denning said yes and he doesn’t accept that; we need to get this done so we can get Brantwood moving. Mr. Curp said it does require a vote since it has been moved and seconded.

Mr. Chodkowski said you have to vote on the amendment before you can vote on the primary motion. Ms. Campbell said she’s not sure she understands the emergency part. Mr. Chodkowski said the reason it has been proposed as an emergency is so that we can enact the transfer and the plat can be filed prior to the commencement of construction of the project.

Mr. Smith said they waited a year already, why can’t they wait another two weeks. Mayor Flaute asked why Mr. Smith thought that was important. Mr. Smith said he didn’t see why we had to rush when we talked about this last year; now all of a sudden it’s a rush to declare it an emergency. He said he didn’t quite understand how that emergency impacts our city. Mayor Flaute said not having an emergency, what difference will that make to you. Mr. Smith said he didn’t think it fell within the guidelines for an emergency action.

Mayor Flaute said does anyone else want to say good or bad about why we should have this amendment.

Mr. Curp said he proposed the amendment because he thinks we should use the emergency designation in very rare circumstances. He said he didn’t think this meets the test. He said this is just the sale of property and as Mr. Smith said two weeks isn’t going to kill the deal. He said the other thing about emergency clauses in ordinances is that it prohibits voters and property owners in the community from pursuing a referendum if they are not satisfied with an ordinance we passed. He said if there are people in the community who think this is not a good deal then he thinks they have the right to initiate the referendum and get it on the ballot. He said he’s not saying that’s going to happen; he doesn’t know of any, he’s just saying we should not take that option away from them on something that is not truly an emergency situation.

Mr. Chodkowski said technically it’s not two weeks that the transaction would be delayed; it would be two weeks plus 30 days. Ms. Campbell said the last time we voted on this weren’t they supposed to start 90 days afterward. Mr. Chodkowski said there are lots of different things that have caused this project to be delayed to this point and they are what they are. He said in items that have been presented to us from the developer, it hasn’t been their choice to wait this long. He said that’s unfortunately how long it took to get the deal done that was satisfactory to the terms and conditions that were in the best interest of the city. He said whether or not this will impact what they do and how they do it and whether or not this deal goes or does not go, he doesn’t have the answer to that question.

Mayor Flaute said he really wanted to see this deal go and he doesn’t like emergencies either. Mr. Chodkowski said this is an issue that when the original legislation on this item was prepared, the Law Director was not present to advise so we discussed this measure with the Deputy Law Director. He said we had some discussions on whether or not we had a need for an ordinance or a need for a resolution and what goes into that component. He said it was the Deputy Law Director who advised that if we drafted an agreement with certain terms and conditions attached to the resolution and when certain terms and conditions are met then the property could be disposed of. He said unbeknownst to me there was a conversation that occurred between a former council member and the Law Director about whether or not an ordinance was needed to dispose of the property. He said the Law Director not knowing we previously consulted with the Deputy Law Director on this issue said of course an ordinance is needed. He said so the ordinance was brought forth to satisfy the Law Director however discussion with the Law Director would indicate that there is merit to both arguments; the one that was originally proposed by the Deputy Law Director on which council acted almost a year ago and the matter that is now before you. He said he didn’t know if that complicates or clarifies the issue.

Ms. Campbell said Mr. Curp wants to take out the wording for an emergency. Mr. Chodkowski said correct; in other words, we could not sell the property until June which would invalidate the bid that is already been taken. Ms. Campbell said all we have to do is rewrite it and take out those words. Mayor Flaute said if we do that it will invalidate the bid. He asked what bid that was. Mr. Chodkowski said the city solicited bids for the construction of the infrastructure for the Brantwood Subdivision that would occur within the public right of way. He said those bids are required to be held by the bidder until June 11th. He said based on the proposed amendment that Mr. Curp has made and has been seconded; we can’t transaction the property until June 17th which means the plat can’t be filed until June 18th. He said council wouldn’t be in a position to award the contract until the following meeting.

Ms. Campbell said if we did this with the emergency in it, what problem could that create for us. Mr. Chodkowski said if you pass it with the emergency, the issue Mr. Curp has indicated is that it removes the referendum period after the legislation has been enacted. He said if you remove the emergency, it is possible that based on a all the items that also have to occur is this agreement transgresses, the bids that have been received to construct the project be invalidated, and the low bidder will not be required to honor his contract price when council is in the position to award the contract.

Mr. Smith said that doesn’t make sense; this council talked before that even if the purchaser of this property fails to perform, we are still going forward with this project. Mr. Chodkowski said we would have to rebid; we’ve already taken the bid and required the low bidder to guarantee their bid for 60 days, so by the time council can actually pass legislation to award the bid it will be beyond the 60 day period and the low bidder will not be required to honor his bid which may compel the city to rebid the project to find a new low bidder. Mr. Smith said that may be so but if we’re going to go forward with the project and we are the ones holding the purse strings on the TIF. Mayor Flaute said we’re not, they are. Mr. Chodkowski said they are paying us to pay the contractor and we are going to use the TIF revenue to repay that for the money they gave us to build the public infrastructure. He said if you don’t award the contract, they don’t deposit the money and the city has no funds to build the project.

Ms. Campbell said we can rewrite it and take out the emergency. Mr. Chodkowski said then we stand a chance that the contract won’t be awarded.

Mr. Curp said the legislation doesn’t have to be rewritten; you can have a vote tonight and have a vote two weeks from tonight but it doesn’t have to be rewritten to start this legislation. He said we can vote tonight and have a second reading with approval at the next meeting. Mayor Flaute said but if we do that it will invalidate the bid that we have now.

Ms. Campbell said with or without the emergency in there, we have to do another session don’t we. Mr. Chodkowski said you do not; the first reading is tonight and the second reading is tonight and it goes into effect tonight. He said if you do it the way Mr. Curp has asked it to be done, the first reading will be tonight, the second reading will be May 17th, and it will go into effect June 18th. Ms. Campbell said we can take the emergency out, do the first reading tonight, rewrite it and vote on the second reading tonight. Mayor Flaute said you can’t do that unless we keep it as an emergency. He said in order to have the emergency declared we have to vote down the motion that Mr. Curp and Mr. Smith did – you have to say no, then the emergency will stay on. Mr. Chodkowski said the only other way to do it and he has never seen legislation written this way but he would assume it could be done would be to have the second reading on May 17th and declare an emergency to remove the 30 day referendum period. Ms. Campbell said do we have to wait 2 weeks; we could come in tomorrow night and vote. Mr. Chodkowski said you have an obligation to wait so many days between readings which you have to waive.

Mr. Smith said that’s what the emergency clause does is waive the time period between readings. Ms. Campbell said but you are against that. Mr. Smith said he didn’t think it fit the bill for an emergency.

Deputy Mayor Denning said but we need to get this property sold and get this project moving. He said this has been dragging out so long already and had so many other things; we don’t need to be putting up any more road blocks in the way of our partner to be able to get this property in, get the platting done, and get everything moving. He said we are going to waste more of our time, waste more of staff’s time by getting more bids, and we are going to lose good building weather to be able to get this construction done if all that happens. He said he is not a fan of emergency ordinances either but he thought in this case, this cuts the mustard.

Ms. Campbell asked why this was an emergency now when it’s been going on for a while. Deputy Mayor Denning said because of all the contracts that are already in place. Mr. Chodkowski said the short version is that up until recently there were many parts to this project and those parts were not moving. He said they are all now moving parts and to delay the sale of the property may stop several if not all of those moving parts which could effectively kill the project.

Ms. Campbell said if we vote on this with the emergency in it, is it going to cause a problem later. Mr. Chodkowski said in his opinion, no it would not based on the majority of council has asked for this deal to move forward.

Mr. Smith said earlier we were discussing how we could bend the rules so we could not send everybody a letter about the zoning changes in our city and we agreed to send everybody a letter in general form that their zoning could change so call or check the website. He said now here you are with this issue on an emergency and you are again trying to bend the rules. Mr. Chodkowski said he would beg to differ with that assessment; this is perfectly legal and has occurred on numerous occasions with this body. Mr. Smith said he knows it has and we’ve actually abused emergency legislation; there have been a lot of times when he didn’t feel it was necessary and he didn’t feel two weeks would be a big problem with these bidders. He said maybe if anything, you put the cart before the horse on getting these bids – maybe that’s the issue. Mr. Chodkowski said you specifically identified as part of the evaluation process that you appreciated the aggressive tone taken to address this property and asked me to continue such activity; he’s only done what council has asked him to do. Mr. Smith said that was the majority of council; remember that he is not sold on the sale of this property to these people. He said you just got my first yes vote to go forward on this; he’s been a no vote from way back. Mr. Chodkowski said that very well may be the case; he works with what the majority of council directs him to do. Mr. Smith said the majority said that, not Mr. Smith.

Mayor Flaute said the majority said to move forward. Ms. Campbell said right. Mayor Flaute said now we are slowing it down if we don’t do an emergency. Ms. Campbell said then how long will it take to start. Mayor Flaute said July 1st instead of June 1st. Deputy Mayor Denning added if they don’t back out.

Mr. Curp said if this gets passed without the emergency clause it doesn’t necessarily invalidate the bids for development of the infrastructure. He said there is nothing to preclude the city from asking the bidders to extend their bids beyond 60 days to 90 days or whatever. He said there is nothing about this that would automatically terminate the bids. Mayor Flaute said but it could. Mr. Curp said the lowest best bidder could decide not to extend but the next entity that is the second lowest and best may decide to extend and you move on. He said we don’t know what the dynamics will be. Mr. Smith said in these economic time he didn’t think they would back out. Mayor Flaute said but we know they won’t back out if they do this as an emergency; are you willing to take that risk. Mr. Smith said we are taking the right away from the citizens to come forward and say they are not for this project.

Mayor Flaute said he needs clarity on what happens here; if the vote is 3 to 3 since Mr. Schock isn’t here then what. Mr. Chodkowski said then the motion would fail; the first motion on the floor is the amendment to remove the emergency. Mayor Flaute said if that fails then what. Mr. Chodkowski said then you would revert to the second motion which is to approve the legislation as presented. He said if that fails then you have to motion and second until you get somewhere whether that is to table it or not approve it or do whatever it is you decide to do.

Mrs. Brane asked if she could tell council something she learned at the clerk’s conference. Mayor Flaute said yes. Mrs. Brane said you can suspend the rule for a second reading but not pass an ordinance as an emergency; so you can read it for the first and second time on the same night and then go into your referendum period. She said she didn’t know if that would help or not but it might meet the time lines. Mr. Chodkowski said that would put it close.

Mayor Flaute said one more time – what happens, we read it… Mrs. Brane said then you can suspend the rules, read it for a second time, and go immediately into your 30 day referendum period. Mayor Flaute asked Mr. Curp and Mr. Smith if they would be willing to consider that. Mr. Curp said to suspend the rules you would need a super majority; you can’t do that with a simple majority. Mr. Smith said it would take five yes votes to suspend the rules; but if we get the time for the public to submit a referendum, he would be okay with that. Mayor Flaute said we still need five votes.

Mr. Chodkowski said based on the discussion, assuming that Mr. Curp’s amendment failed and the subsequent vote on adopting the ordinance fails, you could move to adopt the legislation by first and second reading tonight and not declare an emergency which will allow you to pass the legislation this evening but would enable the 30 day referendum period which he believed is what Mr. Curp’s concern was. He said but in order to waive the rule for the time period between readings, at least five of you have to vote in support of that motion. Ms. Campbell said if they were to withdraw their motion could we go straight to the third one you were talking about. Mr. Chodkowski said Mr. Curp would have to withdraw his motion or Mr. Smith would have to withdraw his second and an alternative motion would need to be put forth.

Mr. Smith said we should go ahead and call the vote. Ms. Campbell said for the emergency. Mr. Smith said no; for the amendment. Mayor Flaute said you stated you would be willing to withdraw your second if we took the emergency off. Mr. Smith said he didn’t say that. Mayor Flaute said you stated you would be okay with doing what Mary Ann said, right? He said in order to do that, you will have to take away your second. Mr. Chodkowski said you could still vote on this motion and if it fails then a second motion could be what Mr. Smith has suggested. Mayor Flaute said if we go ahead and do this motion, then the next motion would be to take off the emergency and have the first and second reading tonight and then the citizens can still do a referendum. Mr. Chodkowski said correct. Mayor Flaute said if we get 3 yes votes and 3 no votes then the amendment fails. Mr. Chodkowski said you would then have to call for the vote on the original motion which is to adopt the legislation as presented. Mayor Flaute said so we would have to withdraw that. Mr. Chodkowski said first you have to vote on the initial motion and the second regardless of whether or not the amendment fails.

Mayor Flaute asked the clerk to read the motion. Mrs. Brane said it’s the amendment to remove the emergency language which you would still have to do if you want to read it twice tonight and have a referendum period; you would still have to remove the fact that it’s an emergency.

There was a brief discussion on procedure and Mr. Curp said first you vote on the amendment, then you vote on the ordinance as amended if the amendment passes or as it was originally presented if the amendment fails, then you vote on suspending the rules, and then you vote on the second reading.

With no further discussion, a roll call vote to remove the emergency language was as follows: Mr. Curp, yes; Mr. Smith, yes; Ms. Campbell, yes; Deputy Mayor Denning, yes; Mr. Fullenkamp, yes; and Mayor Flaute, yes. **Motion passed.**

A roll call vote to approve the first reading of Ordinance No 12-O-489 as amended was as follows: Deputy Mayor Denning, yes; Mayor Flaute, yes; Ms. Campbell, yes; Mr. Curp, yes; Mr. Fullenkamp, no; and Mr. Smith, yes. **Motion passed.**

A motion was made by Deputy Mayor Denning to suspend the rules that dictate the number of days between consecutive readings of ordinances. Ms. Campbell seconded the motion. A roll call vote was as follows: Deputy Mayor Denning, yes; Ms. Campbell, yes; Mr. Curp, yes; Mr. Fullenkamp, no; Mr. Smith, yes; and Mayor Flaute, yes. **Motion passed.**

A motion was made by Deputy Mayor Denning to read Ordinance No, 12-O-489 for the second time by title only and approve its adoption. Ms. Campbell seconded the motion.

The clerk of council read Ordinance No 12-O-489 for the second time by title only and Mayor Flaute asked if there were any questions or comments.

Being none, a roll call vote was as follows: Deputy Mayor Denning, yes; Ms. Campbell, yes; Mr. Curp, yes; Mr. Fullenkamp, no; Mr. Smith, yes; and Mayor Flaute, yes. **Motion passed.**

 **II. RESOLUTIONS**

* + 1. **Resolution No. 12-R-1662 appointing the Clerk of Council and the Assistant City Manager as the Riverside City Council’s Representatives for Ohio Public Records training.**

Mr. Chodkowski said this Resolution is to appoint the Clerk and the Assistant City Manager as Council’s representatives for Ohio Public Records training.

A motion was made by Deputy Mayor Denning to approve Resolution No. 12-R-1662. Mr. Smith seconded the motion. All were in favor; none were opposed. **Motion passed.**

 **b. Resolution No. 12-R-1663 authorizing the Riverside/WPAFB Relay for Life Committee to place temporary promotional signs in the public right of way under certain terms and conditions.**

Mr. Chodkowski said this resolution is to authorize the placement of signs in the public right of way for the WPAFB/City of Riverside Relay for Life event.

A motion was made by Deputy Mayor Denning to approve Resolution No. 12-R-1663. Mr. Smith seconded the motion.

Mr. Curp said based on the discussion we had earlier this evening, he’s not sure why we are going to vote on items b, c, and f. Mayor Flaute said the reason he sees is because we haven’t had the ordinance in effect yet so council should still have the opportunity to approve that until the ordinance is in effect. He said there is very little liability now because an ordinance is in effect and he believes it is appropriate. He said it has been motioned and seconded, any other discussion.

Mr. Curp said the fact that we don’t have an amended ordinance in front of us doesn’t change what the Law Director opined when she was here this evening, saying that what we are doing is not going to stand up in a court of law. Mayor Flaute said it’s risky; she said if someone comes in an asked us to do this and we say no, that won’t stand up in a court of law. He said we’ll just have to say yes if somebody else comes in. Mr. Curp said what she said is we can’t discriminate against signs based on content neutral court decisions. Mayor Flaute said that’s what the new ordinance is going to do. Mr. Curp said a portion of our ordinance is unconstitutional and that’s the part that says we’re doing what we’re doing. He said we can discriminate against one set of signs that has codes, nonetheless, council will do what it’s going to do but he is going to take the same position as last meeting when we had another one of these in front of us and that is – he’s not going to vote against this and he’s not going to vote for it, he’s just not voting on any more of these until we get this fixed. Mayor Flaute said and we are going to get it fixed. Mr. Curp said it’s not that he doesn’t want people to have their signs; he wants everybody to have their signs but it has to be everybody and not just some signs. He said he wasn’t going to vote on anymore of these.

Mr. Smith said he agreed; it needs to be fair. Mayor Flaute said if somebody comes in and asks, we’ll give them permission – he hoped we would.

Deputy Mayor Denning said the other side of this is, and he understood Mr. Curp’s point, none of these organizations that have asked for this and it has been our standard way of doing business, they have no way of changing their way as close as this to be able to do the advertising they need to do. He said if we are going to change that then we need to give them ample time to come up with a solution to the problem that they thought was already solved by coming to us and asking for permission; or they are going to go to the extent of breaking the rules and sticking the signs out there and hoping the city doesn’t nail them within the 30 day time period. He said he thinks it is short sited of us as a community to try to enforce this. He said we haven’t even heard from our constituents yet about what they believe we should be doing with our sign ordinances and when the minutes go out and the organizations see what we are trying to do here, he thinks this room is going to be full next time griping and moaning about it. He said so we better be careful of what we are doing and he thinks we should go ahead and pass these.

Mr. Curp said he didn’t think our constituents can come in here and authorize us to violate the first amendment provisions of the constitution, that’s just not going to fly in any court of law in the United States or Montgomery County. He said secondly, he wants to give council something to consider as we move forward, and the City Manager alluded to some degree; a bunch of these sign locations requested are probably not locations that should even be in front of us for approval because they are in parts of the right of way the city doesn’t own – it’s the right of way that is owned by the property owner. He said he didn’t know that we as a city have the right or ability to tell a private property owner that somebody else can put a sign in on their property or that we can tell a private property owner that they have to allow a sign or can’t allow a sign on the property they own. He said there is right of way we own and there’s right of way we don’t; we have easement and access to rights of way but we don’t own all the right of way. He said he thinks there has been some confusion based on going back and looking at some of the comments reflected in the minutes, maybe confusion over the roadway right of way along Woodman Drive and Airway and Springfield Street as opposed to the tree lawn between the sidewalk and the curb on somebody’s property that is right of way. He said there are signs that have been in front of us for approval that are in locations that are a tree lawns between the sidewalk and the curb, that is certainly right of way but it is owned by the personal property owner who owns the lot on the other side of the sidewalk. He said he’s not sure any of these requests need to be in front of council. He said the Lions Club is a prime example; if you look at where they usually set up for their signs such as over in front of Mad River School – that’s probably not in the right of way, it’s on Middle School property and their parking lot. He said same thing in front of Goodyear and InfoCision on Woodman Drive – they may not be in the right of way. He said we have people coming in here thinking they have to have our approval for signs and we have no consistency in what we are doing.

Deputy Mayor Denning said he put up political signs in his front yard and he was told they were in the right of way and he had to move them back. He said from what you are telling me, no one had the right to tell me to do that; is that a true statement or not. Mr. Curp said he saying that is a question that he has because that issue is starting to be looked at by the courts also. Mr. Chodkowski said we may not own the property but we have control and jurisdiction within the right of way. He said if components of the right of way extend on your private property, we have the ability to direct control the content within the right of way.

Ms. Campbell asked how many feet into the property. Mr. Chodkowski said it all depends on the property and the road.

Mayor Flaute said just a point he wants to make to go back on what Deputy Mayor Denning said is tonight there was a big discussion and lots of time talked about how our citizens have a right and should be able to tell us how they feel about some of our ordinances. He said now as Deputy Mayor Denning said, you are telling a whole bunch of people that they don’t have the right to come in here and tell us about that, because they have the expectation we are going to do that. Mr. Curp said he did not say that at all; what he’s said is he didn’t think there are people that can authorize us to do something that directly violates the constitution.

Mr. Chodkowski said as a point of order when the Law Director earlier advised you to pass an ordinance, the code requires council to pass a resolution authorizing the Planning Commission to hold a public hearing. He said there will be a public hearing on the amendment to the sign ordinance discussed earlier and there will be ample opportunity for the citizenry to speak with respect to that proposed legislative change.

With no further discussion, a roll call vote was as follows: Deputy Mayor Denning, yes; Mr. Smith, yes; Ms. Campbell, no; Mr. Curp, not voting; Mr. Fullenkamp, no; and Mayor Flaute, yes. **Motion failed.**

**c. Resolution No. 12-R-1664 authorizing St. Helen’s Parish to place temporary promotional signs in the public right of way under certain terms and conditions.**

Mr. Chodkowski said this resolution is to authorize the placement of temporary signs within the public right of way on behalf of St. Helen’s Parish

A motion was made by Deputy Mayor Denning to approve Resolution No. 12-R-1664. Mr. Smith seconded the motion. A roll call vote was as follows: Deputy Mayor Denning, yes; Mr. Smith, yes; Ms. Campbell, no; Mr. Curp, not voting; Mr. Fullenkamp, no; and Mayor Flaute, yes. **Motion failed.**

**d. Resolution No. 12-R-1665 by the Council of the City of Riverside, Ohio advancing $35,000 from the General Fund to the CDBG Fund.**

Mr. Chodkowski said this resolution is to authorize the advancement of funds from the General Fund to the CDBG Fund in advance of reimbursement from Montgomery County with respect to the Neighborhood Stabilization Project.

A motion was made by Deputy Mayor Denning to approve Resolution No. 12-R-1665. Mr. Smith seconded the motion. All were in favor; none were opposed. **Motion passed.**

**e. Resolution No. 12-R-1666 authorizing the City Manager to reject the lowest responsive bid submitted by Leo B. Schroeder, Inc. for the Brantwood Section One Project as not being the best qualified bidder.**

Mr. Chodkowski said this resolution is to authorize rejection of the lowest responsive bid by Leo B. Schroeder with respect to Brantwood Section One Project.

A motion was made by Deputy Mayor Denning to approve Resolution No. 12-R-1666. Mr. Smith seconded the motion. All were in favor; none were opposed. **Motion passed.**

 **f. Resolution No. 12-R-1667 authorizing the Forest Ridge Homeowners Association to place temporary promotional signs in the public right of way under certain terms and conditions.**

Mr. Chodkowski said the resolution is to authorize temporary placement of signs within the public right of way for the Forest Ridge Homeowners Association.

A motion was made by Deputy Mayor Denning to approve Resolution No. 12-R-1667. Mr. Smith seconded the motion. A roll call vote was as follows: Deputy Mayor Denning, yes; Mr. Smith, yes; Ms. Campbell, no; Mr. Curp, not voting; Mr. Fullenkamp, no; and Mayor Flaute, yes. **Motion failed.**

**ITEM 16: PUBLIC COMMENT ON NON-AGENDA ITEMS:**  Ms. Jan Pitzer of Wake Forest asked if the city knew anything yet about the EPA Grant. Mr. Chodkowski said no, his understanding is the response is due later month. Ms. Pitzer said you mean when the money will be disbursed; the city should have been notified April 24th. Mr. Murray said we have not been notified yet and he placed a call today to find out but they have not returned the call.

**ITEM 17: COUNCILMEMBER COMMENTS:** Mayor Flaute said he just had a couple comments; He attended the Miami Valley Regional Planning Commission dinner was at WPAFB – a couple of us were there and it was very good. He said he also went to the Fisher-Nightingale event which went very well. He said he only had 2 weddings but he has 3 tomorrow so we are doing good with that. He said there was some news and he was going to have a moment of silence which we will do next time; one of our former City Managers died, Mr. Bill Covell. He said he was City Manager for a couple of us on council; Mr. Covell died of cancer at age 63 and was currently the Economic Development Director in West Carrollton so all our thoughts to Mr. Covell’s family.

**ITEM 18: ADJOURNMENT:**  A motion was made by Ms. Campbell to adjourn. Deputy Mayor Denning seconded the motion. All were in favor; none were opposed. The meeting was adjourned at 9:47 p.m.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

William R. Flaute, Mayor Clerk of Council