TIPP CITY COUNCIL MEETING

TIPP CITY, MIAMI COUNTY, OHIO JUNE 4, 2007

Roll Call

Mayor George H. Lovett called to order the regular meeting of the Tipp City Council at 7:30 p.m. Roll call showed the following Council Members present: Rick Mains, Jr., Vickie K. Blakey, Donald H. Ochs, Mayor George H. Lovett, Tim Evans, and Patrick Hale.

Motion to Excuse Council Member

A motion to excuse President William D. Beagle was made by Mr. Ochs, seconded by Mr. Hale, and unanimously approved.

In attendance: City Manager David A. Collinsworth, Law Director Joseph P. Moore, Finance Director Richard Drennen, Assistant City Manager Bradley C. Vath, Sgt. Gary Gulden, Fire Chief Steve Kessler, *Dayton Daily News* reporter Nancy Bowman, *Tipp Herald* reporter Mike Kelly, and Clerk of Council Misty Cheshire.

Citizens signing the register included: Suzanne McGillvary, Phillip Scadden, Kim Hui Scadden, Liza M. Burns, Linda Whitt, Betty Peters, Joe Bagi, Carl Owen, Gearied F. Hitchcock, Jr., Doug Lohnes, David Burig, Doris Dodd, and Elden Eidemiller.

Invocation and Pledge of Allegiance

Councilman Richard Mains, Jr. delivered the invocation. Mayor Lovett led the Pledge of Allegiance.

Approval of Agenda

Mr. Ochs moved, seconded by Mr. Evans, to approve the agenda as submitted, seconded by Mr. Evans. The motion carried.

Adoption of Minutes

Mr. Ochs moved, seconded by Mayor Lovett, to adopt the minutes of the May 21, 2007 Pre-Meeting Study Session. The motion carried with a vote of 6-0.

In regard to the Eidemiller rezoning, Mayor Lovett stated that minutes of the May 21, 2007 City Council Meeting minutes should reflect that the builder withdrew his proposal.

Mr. Ochs amended page 191, paragraph 10, of the May 21, 2007 City Council Meeting minutes to read as follows: "Mr. Ochs moved to sponsor the blue ordinance *and later withdrew his sponsorship after consulting with the Law Director who explained that sponsorship of the ordinance printed on blue paper would have to have a new first reading.* ~~The ordinance died for lack of a second.~~"

Mr. Ochs, seconded by Mr. Hale, moved to adopt the amended minutes of the May 21, 2007 City Council Meeting. The motion carried 6-0.

Mr. Mains moved to adopt the minutes of the May 21, 2007 Post-Meeting Study Session, seconded by Mr. Evans. The minutes were unanimously adopted.

Resolutions (One Reading Required)
Resolution 18-07
Tax Budget

The following resolutions were presented to City Council for adoption.

Resolution 18-07: A resolution to approve and adopt the tax budget for the Municipality of Tipp City, Ohio for the year 2008.

Clerk of Council Summary: Approval of the 2008 tax budget is required by the County Auditor under Ohio law. The main purpose is to request the City's share of the inside 10-mill property tax levy, which is currently 1.4 mills; its secondary purpose is to file an estimate of the City's 2008 receipts with the County Budget Commission.

City Manager Report: Mr. Collinsworth stated that this was a perfunctory activity required under Ohio Revised Code and required by the Miami County Auditor's office. This action will allow the City to receive a portion of the inside millage rate and determine the City's estimated resources for 2008.

There being no further discussion, Mr. Hale sponsored this resolution and moved for its adoption, seconded by Mr. Ochs. The motion unanimously carried. Resolution 18-07 was declared passed and Mayor Lovett affixed his signature in witness thereto.

Resolution 19-07
Menards Logo Sign
Zoning Variance

Resolution 19-07: A resolution reversing the Board of Zoning Appeals decision regarding a sign variance for Menards, Inc.

Clerk of Council Summary: Passage of this resolution will allow Menards Inc. to install a 567 sq. ft. Menards logo sign on the façade of their proposed Weller Drive facility.

City Manager Report: On May 21, 2007 City Council overturned a BZA decision that denied a variance requests for signage on the Menards building. Mr. Collinsworth noted that this resolution would grant a 487 sq. ft. variance in sign area for a building façade sign on the Menards building. The total size of the sign will be 567 square feet.

Mr. Evans amended the resolution to correct the dates referenced in paragraphs 4 and 7 to May 21, 2007.

There being no further discussion, Mr. Evans sponsored this resolution and moved for its adoption, seconded by Mr. Mains. The motion carried with a vote of 5-1. Mrs. Blakey cast the dissenting vote. Resolution 19-07 was declared passed and Mayor Lovett affixed his signature in witness thereto.

Resolution 20-07
Menards Lumber Yard
Sign Zoning Variance

Resolution 20-07: A resolution reversing a Board of Zoning Appeals decision regarding a sign variance for Menards, Inc.

Clerk of Council Summary: Passage of this resolution will allow Menards Inc. to install a 24 sq. ft. "Lumber Yard Entrance" directional sign for their proposed Weller Drive facility.

City Manager Report: On May 21, 2007 City Council overturned a BZA decision that denied a variance request for directional signage. Mr. Collinsworth noted that this resolution would grant a 12 sq. ft. variance in sign area for a lumber yard entrance sign. The total size of the sign will be 24 square feet. Mr. Collinsworth stated that the BZA could only grant a 3 sq. ft. variance by Code.

Mr. Evans amended the resolution to correct the dates referenced in paragraphs 4 and 7 to May 21, 2007.

There being no further discussion, Mr. Evans sponsored this resolution and moved for its adoption, seconded by Mr. Ochs. The motion carried with a vote of 5-1. Mrs. Blakey cast the dissenting vote. Resolution 20-07 was declared passed and Mayor Lovett affixed his signature in witness thereto.

Resolution 21-07
Clerk of Council Pay Adjustment

Resolution No. 21-07: A resolution authorizing a change in the compensation of the Clerk of Council.

Clerk of Council Summary: This resolution would authorize an increase in Clerk of Council's hourly rate of pay.

Mayor Lovett noted that President Beagle and City Council recently conducted Mrs. Cheshire's annual review. This resolution would authorize an increase in Mrs. Cheshire's hourly rate of pay from $17.45 to $18.06, effective June 4, 2007.

There being no further discussion, Mayor Lovett sponsored this resolution and moved for its adoption, seconded by Mr. Evans. The motion unanimously carried. Resolution 21-07 was declared passed and Mayor Lovett affixed his signature in witness thereto.

Ordinances (First Reading)

The following ordinances were presented to City Council for first reading. The second reading and public hearing will occur at the June 18, 2007 meeting.

Legacy District Rezoning

Mr. Ochs sponsored an ordinance to amend the zoning code and the map attached thereto by overlaying a portion of Tipp City adjacent to the railroad tracks with the Legacy District (LD) Overlay Zoning designation.

Clerk of Council Summary: The Planning Board reviewed and recommended this rezoning at their May 8th meeting.

City Manager Report: Mr. Collinsworth stated that this rezoning would follow the recommendations of the Legacy Reuse Plan and would establish a new overlay zoning classification known as "Legacy District".

Barking Dog Code Amendment (Tabled)

An ordinance amending Section 90.05 of the Tipp City Code of Ordinances and declaring an emergency.

Clerk of Council Summary: This ordinance modifies current City Code requirements concerning animals and will assist in the enforcement of barking dog violations.

City Manager Report: Mr. Collinsworth noted that the proposed legislation would change the standard of "annoyance" from the neighborhood to "another person". As directed by City Council, the legislation was drafted as an emergency ordinance and will be effective immediately upon passage. He noted that the Law Director has approved the language of the ordinance.

Mr. Mains sponsored this ordinance, declaring an emergency, and moved for its adoption, seconded by Mr. Ochs.

Mr. Hale stated that if the ordinance was modified to become more defined or stricter, City Council would need to have a new first reading for this ordinance. He then asked the City Manager if there was anything pushing the adoption of this ordinance or could it be delayed for a few weeks. Mr. Collinsworth stated that the Police Department could not enforce this section of Code as currently written.

Mr. Evans stated that he has been contacted by citizens and received letters pertaining to this matter. He expressed concern about the enforcement of the ordinance. The existing ordinance was challenged in court, which may actually be the result of neighbor related issues rather than dog barking issues. Letters that he received reference a neighbor who was constantly calling in to report barking dogs. Mr. Evans stated that he wanted to be protective of the community and be sure the City was not opening itself up for more calls and citations by switching the language from neighborhood to individual allowing one neighbor to make efforts to annoy their neighbors. He agreed the ordinance needed to be amended but wasn't sure if the proposed format was best for the City.

Mayor Lovett asked Sgt. Gulden if the proposed language was similar to the disorderly conduct language in the Code. Sgt. Gary Gulden stated that disorderly conduct addresses loud noises but doesn't address automobile or animal noise. He stated that this was a complicated issue with no easy answer. For the most part, Police Officers do not like to cite people for dog ordinances. He estimated that the City cites less than 12 people a year for dog barking complaints. Sgt. Gulden stated that numerous warnings are issued before a person is cited for dog barking.

Mayor Lovett stated that the disorderly conduct language has been around for a long time and the courts have wrestled with it. Sgt. Gulden stated that the current ~~ordinance~~ policy requires the police to contact every adjacent property owner and see if they have a complaint. ~~If a consensus is reached a citation can be issued.~~ corrected 6-18-07

Mr. Collinsworth stated that there would be very little change operationally as to how the Police Department handles dog barking complaints under the new ordinance. He stated that it had not been the Police Department's practice to go around and knock on adjacent property owners doors and determine if other neighbors were annoyed. Sgt. Gulden agreed.

Phillip Scadden, 707 Shirley Drive, stated that he was opposed to the proposed language "another person". He stated that his neighbor was unreasonable and if the dog barks once they call the police. He stated that his 15 other neighbors have no complaints about his dog barking. He stated that he tries to be a responsible pet owner; he brings his dog in early and doesn't want the dog to bother anyone. He suggested the ordinance have a time restraint. He stated that it was not fair to use one person as a standard for the entire neighborhood.

Liza Burns, 501 Hathaway Trail, stated that she understood the need to make a law that protects everyone and it was important to respect people's opinions. She stated that she made every effort to keep her dog inside. She stated that on some days the police are called 20-30 times and there are no dogs barking. Ms. Burns stated that dog owners are being harassed and the law should also protect the dog owners. She stated that she didn't want to start a neighborhood war. She questioned the definition of loud or habitual. Ms. Burns stated that the proposed ordinance was promoting petty neighborhood issues. She said that the ordinance needed more leeway and language that didn't alienate everyone with a dog. Ms. Burns stated that she has made every effort possible to accommodate her neighbor.

Betty Peters, 509 Hathaway Trail, stated that she didn't own a dog but several of her neighbors have dogs, including Ms. Burns. She stated that they never noticed the dog barking until this issue was brought up. She questioned who was being protected and who was being harmed by the proposed language. She stated that birds in the morning keep them awake not the dogs.

Kathy Lee, 152 W. Franklin Street, stated that she owned two dogs. She asked Council to give careful consideration to the wording of this ordinance. She stated that there was someone in every neighborhood that would never be happy no matter what you do to accommodate them. That type of person will use the language in the ordinance against their neighbors. Mrs. Lee asked Council to consider how the wording would affect dog owners.

Mr. Ochs stated that this was an enforcement matter and how the Police Department enforced the ordinance would determine how people are affected by the ordinance. Ordinance wording that limits the City should be modified to help enforce of the laws. Mr. Ochs stated that the new ordinance could be modified if it doesn't work. He noted that the Law Director has recommended the amendment and stated that it was worthy of giving it a try and if it didn't work out he was willing to consider another change.

Mr. Hale suggested staff take a few more weeks to research ordinances in other cities and consider a time or distance restriction. He stated that "any individual" was too generic and broad. Mr. Hale stated that he would not be supporting this ordinance as written.

Mr. Evans stated that he had a hard time with ordinances that can potentially pit neighbors against each other or petty disagreements that can occur and can be escalated by the ordinance. He stated that this language was putting a tremendous burden on the officers. Mr. Evans stated that this was a "tattletale law" and he would not be supporting it.

Mr. Mains stated that he looked at this issue like speeding, above a certain limit is illegal. The officers have the discretion to issue a warning or issue a citation.

Mr. Hale stated that the proposed language allowed a neighbor to get upset over one bark.

Mr. Collinsworth stated that the ordinance referenced "loud, frequent or habitual," which is the existing standard. He stated that a police officer would have to make an independent judgment typically after multiple visits and the circumstances surround the complaint.

Sgt. Gulden stated that in order to have a successful prosecution the officer always wants to have a warning in the file. He stated that a procedure or policy could be to require three warnings before a citation was issued.

Mr. Mains stated that City Council needed five affirmative votes to pass this ordinance and based upon the comments made by Mr. Hale and Mr. Evans they would not be supporting the ordinance. Therefore he recommended the ordinance be tabled.

Mr. Mains moved to table this ordinance for further consideration, seconded by Mr. Evans. The motion unanimously carried.

Mayor Lovett suggested Mr. Hale and Mr. Evans provide staff with sample language that would be superior to the proposed ordinance. In his opinion, the ordinance was drafted appropriately. The problem with getting specific about distances and noise levels is that officers would need to learn how to use expensive equipment, which the City would have to purchase and make the ordinance more problematic to enforce. Mayor Lovett stated that he was confident that the Police Department would implement the proposed ordinance fairly. He stated that the court system was comfortable with the word "person." Mayor Lovett noted that one magistrate would not enforce the existing ordinance and a change needed to be made. He asked if City Council wanted the ordinance language to be cutting edge or language that was tried, tested, and true in Ohio courts for generations. Mayor Lovett stated that he would have supported the ordinance as written.

Mr. Evans asked if was possible to require the Police Department to administer a policy outlining the procedures for the enforcement of this ordinance.

Mr. Ochs stated that he would not be interested in micromanaging the policies of the Police Department or any other department in the City. He reiterated that this was an enforcement matter and trusted the police officers would handle complaints correctly. He stated that he would support this legislation should it come forward again. Mr. Ochs said that he put his trust in the individual officers handling the complaints who have been responding to these complaints more often than City Council could ever dream of.

Citizen Comments
D. Burig

David Burig, HD Living Enterprises, requested a joint meeting with the Planning Board, City Council, and the developers of Eidemiller property located at 610 W. Kessler-Cowlesville Road. He also asked if it would be possible to streamline the rezoning process to avoid further delays.

Mr. Vath stated that the traditional rezoning process could take up to 3 months. Mr. Ochs asked if this development would need to go through the entire rezoning process again. Mr. Moore stated that

applicant needed to submit an application to the Planning Board and begin the process again.

Mr. Collinsworth stated that a joint meeting was a reasonable request and could be scheduled if City Council deemed it appropriate. A time and date would have to be coordinated with all parties. Based upon the scope and nature of the project, City Council can determine if any procedures could be expedited.

City Council directed staff to coordinate the meeting.

S. McGillvary

Suzanne McGillvary, 616 W. Main Street, stated that the sidewalk next to Dairy Queen is closed due to construction on Main Street. She recently witnessed a child that was nearly hit by a car while crossing the street. Mrs. McGillvary asked if a temporary crosswalk could be designated near Dairy Queen to ensure the safety of pedestrians in that area.

Mr. Collinsworth noted that signs are posted at the construction site indicating that the sidewalks are closed.

Council Member Comments

Mr. Mains thanked Mrs. Cheshire for her services over the past year.

Mrs. Blakey noted that the City of Riverside intends to begin collecting income tax for a portion of Wright-Patt. She asked the Finance Director if the City would experience an impact from this change. Mr. Drennen stated that he had not computed the numbers.

Mr. Collinsworth stated that a portion of Area B would be affected by this change. He also heard that income tax change is geared toward the contractors only. He noted that many municipalities are concerned about this change. Mr. Collinsworth stated that it was difficult for the City to ascertain the impact.

Mrs. Blakey stated that she had heard that civilians would be affected also. Mr. Collinsworth stated that the City of Riverside estimated that they would collect approximately $500,000 per year.

Mr. Ochs congratulated Mrs. Cheshire and asked how long she has been working for the City. Mrs. Cheshire stated that she has been with the City for seven years.

Mr. Ochs then thanked City Council, the City Manager and the Clerk for the flowers that were sent to memorialize his mother's passing.

City Manger Comments

In order to minimize service impacts to property owners, contractors will do night work on the Main Street Reconstruction Project. On June 18th from 9 p.m. to 2 a.m. a contractor will be doing mosquito fogging in the City. Mr. Collinsworth recommended that residents avoid direct contact with the fogging mist and close home and automobile windows on this evening. The City's annual hydrant flushing program will begin in a few weeks and will be done between midnight and 8 a.m. If residents have discolored water they should allow the cold water to run for 5 to 10 minutes until the water clears. Mr. Collinsworth stated that some areas may experience a temporary change in water pressure.

Mr. Collinsworth noted that the Downtown Partnership's Farmer's Market will kick off on Saturday, June 16th and will run every Saturday morning from 9 a.m. until Noon through September 15th. The Farmer's Market will be on Third Street between Main and Dow Streets.

Adjournment

There being no further business, it was moved by Mr. Ochs, seconded by Mr. Mains, that the meeting be adjourned. The motion unanimously carried. Mayor Lovett declared the meeting adjourned at 8:40 p.m.

George H. Lovett, Mayor

Attest: Misty Cheshire

Misty Cheshire, Clerk of Council