

# RECORD OF PROCEEDINGS

Minutes of Union Township Trustees

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held October 13, 20 09

Union Township Trustees met in regular session on Tuesday, October 13, 2009. The meeting was opened at 7:00 P.M. with the Pledge of Allegiance.

Roll call: Mr. McGee, Mr. Beamer, Mr. Donnellon, Fiscal Officer, Mr. Campbell, Administrator, Mr. Duckworth, Assistant Administrator/Zoning Director, Cory Wright, Service Director, Matt Taylor, Chief Zinser, and Chief Deimling.

Mr. Donnellon made a motion to approve the minutes from the September 22, 2009, regular meeting. Motion seconded by Mr. Beamer. Mr. Donnellon – yea: Mr. Beamer – yea: Mr. McGee – yea.

Silers Drive Thru, Inc, 986 Old SR 74,, Union Township, Batavia, Ohio 45103 has applied for a liquor permit; there are no objections from the Union Township Police Department.

Silers Drive Thru, Inc, 4707 Tealtown Road, Union Township, Milford, Ohio, 45150 has applied for a liquor permit; there are no objections from the Union Township Police Department.

Cheeseburger of Cincinnati, LLC, doing business as Cheeseburger in Paradise, 812 Eastgate North Dr., Union Township, Cincinnati, Ohio, 45245 has applied for a liquor permit; there are no objections from the Union Township Police Department.

Chief Deimling presented his bi-monthly report to the Trustees.

Mr. Beamer thanked the Staff, Lieutenants, and Assistant Chief for the Open house at station 51.

Chief Zinser presented his bi-monthly report to the Trustees.

Mr. Taylor presented his bi-monthly report to the Trustees.

Mr. Wright presented his bi-monthly report to the Trustees.

Mr. Duckworth presented his bi-monthly report to the Trustees.

Mr. Beamer made a motion to have a Work session on November 12, 2009 at 7:00 p.m. Motion was seconded by Mr. Donnellon. Mr. Beamer – yea: Mr. Donnellon – yea: Mr. McGee – yea.

A Public Hearing was held on Zoning case # 3-05-Z.

Mr. McGee swore in the citizens that were going to talk about the zoning cases.

Earl Griffin, 4439 Springfield Court, Batavia, Ohio, 45103 spoke in favor of the fence.

John McGraw, 4604 Blainfield, spoke in favor of the fence.

Anita Neff, 1234 Old State Route 74 spoke against the fence project.

Mr. Donnellon made a motion to deny Zoning Case #3-05-Z Spring Fields Subdivision R-4 Major Amendment. Motion was seconded by Mr. Beamer. Mr. Donnellon – yea: Mr. Beamer – yea: Mr. McGee – yea.

A Public Hearing was held on the Street Lighting District – Wetherby Farms, Section 6.

Mr. Beamer made a motion to adopt Resolution 2009-24, providing for the procurement of a street lighting system for Wetherby Farms, Section 6B. Motion was seconded by Mr. Donnellon. Mr. Beamer – yea: Mr. Donnellon – yea: Mr. McGee – yea.

Mr. Duckworth advised the Board that changing to an HRA plan will save the township a minimum of \$150,000. With employees participating in the deductible, Mr. Duckworth predicts that the savings will be somewhere between \$150,000 and \$250,000 based on past utilization history.

Mr. Donnellon made a motion to approve HRA insurance plan with Anthem. Motion was seconded by Mr. McGee. Mr. Donnellon – yea: Mr. McGee – yea: Mr. Beamer – yea.

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Mr. Beamer made a motion to pay the outstanding bills. Motion seconded by Mr. Donnellon. Mr. Beamer – yea: Mr. Donnellon – yea: Mr. McGee – yea.

Mr. Donnellon made a motion to accept the Monthly Financial report. Motion seconded by Mr. Beamer. Mr. Donnellon – yea: Mr. Beamer – yea: Mr. McGee – yea.

Mr. Beamer made motion to approve the purchase orders presented by Mr. Duckworth. Motion was seconded by Mr. Donnellon. Mr. Beamer – yea: Mr. Donnellon – yea: Mr. McGee – yea

Mr. Donnellon made a motion to adopt Resolution 2009-23, authorizing the abatement of the noxious weeds or the removal of debris pursuant to Section 505.87 of the Ohio Revised Code at the following addresses: (1) 1179 Nature Run Road, Batavia, Ohio, 45103 (2) 182 Nature Run Road, Batavia, Ohio, 45103, (3) 1074 Riddle Road, Cincinnati, Ohio, 45245, (4) 4450 Kitty Lane, Batavia, Ohio 45103. Motion was seconded by Mr. Beamer. Mr. Donnellon – yea: Mr. Beamer – yea: Mr. McGee – yea.

Mr. Donnellon made a motion to adopt Resolution 2009-25, supporting the vacating of a section of Cornstalk Lane as requested by the Board of County Commissioners.

Richard Scott, 1242 Jenkins Lane wants to have the trailer in Jenkins Lane condemned at 1240 Jenkins Lane.

John McGraw, 4604 Blainfield, thanked the Board for the nuisance abatement on Kitty Lane.

Mr. McGee made a motion to go into Executive Session at 9:10 p.m. pursuant to Section 121.22 of the Ohio Revised Code for the following:

1. To Confer with Legal Counsel for Pending or Imminent Litigation Pursuant to Section 121.22 (G)(3) of the Ohio Revised Code

Motion was seconded by Mr. Donnellon. Mr. McGee – yea: Mr. Donnellon – yea: Mr. Beamer – yea.

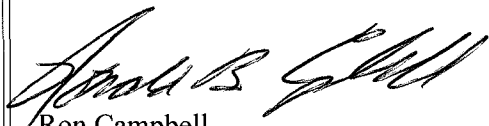
Mr. Donnellon made a motion to leave Executive Session at 9:58 p.m. with no action taken. Motion was seconded by Mr. Beamer. Mr. Donnellon – yea: Mr. Beamer – yea: Mr. McGee – yea.


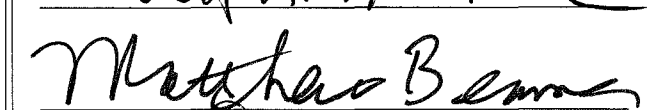

Mr. Donnellon made a motion to make Mr. Duckworth pro clerk tem. Motion was seconded by McGee. Mr. Donnellon – yea: Mr. McGee – yea: Mr. Beamer – yea.

Mr. Donnellon made a motion to adjourn. Motion was seconded by Mr. Beamer. Mr. Donnellon – yea: Mr. Beamer – yea: Mr. McGee – yea.

Meeting adjourned at 9:59 p.m.

Respectfully submitted,

  
Ron Campbell,  
Union Township, Fiscal Officer

Approved:  
  
  


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Zoning

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A Public Hearing was held on Zoning case # 3-05-Z.

The applicant has submitted an application requesting a Major Amendment to an approved R-4 Single Family Variable Structure Residential Plan for Spring Fields Subdivision in order to allow fencing as presently and illegally installed to remain within the designated open space.

Spring Fields is a subdivision located along the northern side of Old State Route 74 and adjacent to the western side of Heitman Lane; near the intersection of Old State Route 74 and State Route 32 not far from the eastern boundary in central Union Township. The subject fencing is located on Lot 34, PIN 413103B281 designated as open space and containing the required detention basin. It extends along the lot line of Lot 9 (413103B256, 4437 Springfield Court) and out from Lot 10 (413103B257, 4439 Springfield Court) into the open space.

Since the issuance of a Formal Plan approval to the development known as Spring Fields Subdivision, the development has steadily approached build out conditions, with all but a handful of lots remaining available within the 34 lot development. The applicant originally applied for a fence permit in November of 2008, to fence the perimeter of his property as to define the rear yard. However, upon inspection, the Zoning Inspector noted that the applicant had mis-represented his application and subsequently instructed the fencing company to install the fence to connect with a rear open space fence separating the development from an adjoining property. The inspector subsequently advised the fence company as to the approximate location of the property line and instructed them to remove any installation from the designated open space parcel immediately. However, the applicant subsequently disregarded repeated warnings from the department and installed fence illegally upon a designated and platted open space parcel which was contradictory to the approved R-4 Single Family Variable Structure Final Development plan.

Since that time, the applicant has ignored repeated requests to remove the fence, and as such, is the current target of pending litigation by the Township. Specifically, after all administrative efforts to secure removal of the fence were rebuffed, the Township filed for an injunction against Mr. Griffin and the HOA seeking to enjoin them from preserving the fencing in its present state, and further seeking a remedy resulting in the removal of the fence. The applicant did attempt to file an R-4 Minor Amendment with Planning Staff, but due to concerns over impacts to adjoining properties resultant from Mr. Griffin's proposed fencing configuration, that application was rejected on the grounds that such an action was in fact a major amendment requiring action by the Board. The current fencing situation is such as to result in a "de facto" large rear yard for Mr. Griffin, allowing him to take advantage of both property deeded directly to him, and also a portion of the platted open space parcel containing the development detention structure, thereby encroaching upon neighboring and adjacent properties and minimizing the buffering provided by the previously unfenced open space parcel.

While the issue at hand here is a relatively simple issue at first glance, the implications of such an application are numerous. First, it is clear that Mr. Griffin has disregarded the zoning regulations and warnings from Planning Staff about encroachment into the designated open space parcel as evidenced by his lack of compliance and continued efforts to maintain the fence in its current location. Further, a larger and more fundamental question arises concerning the disposition of open space throughout a development, and in this instance, whether an adjoining property owner within an approved R-4 Development can "privatize" what is otherwise intended to be common open space for his/her own enjoyment through the extension of a fence from deeded property into commonly held property. Clearly, the encroachment into the designated open space parcel is not in dispute in this instance, as Mr. Griffin has acknowledged to Staff that the fence is located partially on his property and partially within the open space detention parcel and that his intentions were to gain a larger rear yard than otherwise afforded to him by his platted lot line.

The fundamental issue at hand here is whether a privately owned fence should be permitted to extend into a *platted* open space parcel held in common by the HOA. While the development covenants and restrictions, as drafted by the HOA in 2008 and as approved by the Township, do permit the extension of fencing within privately held conservation easements located on each building lot of record, the covenants and the R-4 Formal Plan do not allow for private fencing to be extended upon platted open space parcels – an important distinction in this regard since in Spring Fields Subdivision, a majority of the lots are encumbered by small open space easements at the rear of the property, owned by the individual property owner. In contrast, Mr. Griffin's lot adjoins a parcel that is actually recorded as open space, and cannot ever be built upon, save for designated detention structures. The key difference

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here is the distinction between privately held lands encumbered by easement, as opposed to lands held in common for preservation in perpetuity and the accompanying expectation by adjoining properties within and adjacent to the development that the lands currently occupied by the illegal fence would be HOA lands preserved in perpetuity, and not, for all practical purposes, an extension of a property owner's back yard. Mr. Griffin also asserts that safety is a concern in explaining his original illegal construction of fencing around the basin, but unfortunately, this application falls far short of addressing any perceived safety issue, since the basin was originally constructed to be a "dry" basin, and since the application does not address fencing on all sides of the basin – only the side of immediate consequence to Mr. Griffin's property.

Mr. McGee swore in the citizens that were going to talk about the zoning cases.

Earl Griffin, 4439 Springfield Court, Batavia, Ohio, 45103 spoke in favor of the fence.

John McGraw, 4604 Blainfield, spoke in favor of the fence.

Anita Neff, 1234 Old State Route 74 spoke against the fence project.

Lengthy discussion occurred relative to the permit, fence, and property line.

Mr. Donnellon made a motion to deny Zoning Case #3-05-Z Spring Fields Subdivision R-4 Major Amendment. Motion was seconded by Mr. Beamer. Mr. Donnellon – yea: Mr. Beamer – yea: Mr. McGee – yea.

Respectfully submitted,



Ron Campbell,  
Union Township, Fiscal Officer

Approved:

