

**FORT MITCHELL CITY COUNCIL
REGULAR MEETING
October 7, 2013**

CALL TO ORDER / PLEDGE OF ALLEGIANCE / ROLL CALL

Mayor Wiest called the meeting to order at 7:02 pm and led the Pledge of Allegiance.

PRESENT: Vicki Boerger, Mary Burns, Ray Heist, Frank Hicks and Kim Nachazel. **Absent:** Jim Hummeldorf, Dan Rice and Dennis Zahler.

OTHERS PRESENT: Mayor Chris Wiest, City Attorney Rob Ziegler, City Administrator Chris Moriconi, Public Works Director Dave Noll, Fire Chief Scott McVey, Police Chief Jeff Eldridge, Martin Scribner of NKAPC, and Deputy City Clerk Debbie Krueger.

APPROVAL OF MINUTES

Mrs. Boerger made a motion to approve the minutes of September 23, 2013 with corrections. Mrs. Nachazel offered a second to the motion. After asking for discussion or questions and hearing none, the Mayor called for a voice vote. **The motion carried by unanimous voice vote.**

OLD BUSINESS

Mayor Wiest read a statement, attached as Exhibit A to these minutes, on the advice of the City Attorney. The Mayor asked each member of Council present, if they could disregard a letter which may have been sent to their homes from Mr. Joe Hayes. Each Council Member present (Mrs. Boerger, Ms. Burns, Mr. Heist, Mr. Hicks, and Mrs. Nachazel) each affirmatively stated they would disregard the letter and make the zoning determinations solely on the public record made at the Kenton County Planning Commission.

Mr. Ziegler performed a second reading of **Ordinance 2013-22**, Text Amendment Changes, creating MBLU Zone, changing definition of Hotel, making modifications to the LHS Zone, MLU Zones and CPUD Zones (Hummeldorf, Nachazel, Hicks, Burns, Zahler). **Mr. Hicks made a motion to approve Ordinance 2013-22, Ms. Burns offered a second to the motion.** After asking for any further discussion or questions and hearing none, the Mayor called for a roll call vote.

Mrs. Boerger:	Yes	Ms. Burns:	Yes
Mr. Heist:	Yes	Mr. Hicks:	Yes
Mr. Hummeldorf:	Absent	Mrs. Nachazel:	Yes
Mr. Rice:	Absent	Mr. Zahler:	Absent
Ayes: 5	Nays: 0	Absent: 3	Motion Passed.

Mr. Ziegler performed a second reading of **Ordinance 2013-23**, Text Amendment Changes, providing for Museums as a conditional accessory use, and providing for changeable copy signs (Hummeldorf, Nachazel, Hicks, Burns, Zahler). **Mr. Hicks made a motion to approve Ordinance 2013-22, Mrs. Boerger offered a second to the motion.** After asking for any further discussion or questions and hearing none, the Mayor called for a roll call vote.

Mrs. Boerger:	Yes	Ms. Burns:	Yes
---------------	-----	------------	-----

Mr. Heist:	Yes	Mr. Hicks:	Yes
Mr. Hummeldorf:	Absent	Mrs. Nachazel:	Yes
Mr. Rice:	Absent	Mr. Zahler:	Absent
Ayes: 5	Nays: 0	Absent: 3	Motion Passed.

Mr. Ziegler performed a second reading of **Ordinance 2013-24**, Map Amendment of an approximately 28 acre area generally located on the south side of Interstate 75 and on the east side of Buttermilk Pike to MBLU (Hummeldorf, Nachazel, Hicks, Burns, Zahler). **Mr. Hicks made a motion to approve Ordinance 2013-24, Mr. Heist offered a second to the motion.** After asking for any further discussion or questions and hearing none, the Mayor called for a roll call vote.

Mrs. Boerger:	Yes	Ms. Burns:	Yes
Mr. Heist:	Yes	Mr. Hicks:	Yes
Mr. Hummeldorf:	Absent	Mrs. Nachazel:	Yes
Mr. Rice:	Absent	Mr. Zahler:	Absent
Ayes: 5	Nays: 0	Absent: 3	Motion Passed

Mayor Wiest invited Senator McDaniel to speak on redistricting. Senator McDaniel stated that previously the 23rd District he represents did not include Fort Mitchell 7. The redistricting has now included Fort Mitchell 7 in the 23rd Senate District and he now represents all of Fort Mitchell. The house map was not as friendly to Fort Mitchell in as much as it was split into two representatives, Rep. St. Onge and Rep. Koenig. Senator McDaniel presented a map indicating the new redistricting. Mayor Wiest advised that the portion of Fort Mitchell to the east of Dixie Highway is represented by Rep. St. Onge and the portion of Fort Mitchell to the West of the Dixie Highway is represented by Rep. Koenig.

CITIZENS NOT ON THE AGENDA

None

COMMITTEE REPORTS

None

CITY COUNCIL EVENT ANNOUNCEMENTS

None

CONSENT AGENDA

None

OLD BUSINESS-PART 2

Mr. Ziegler performed a second reading of Ordinance 2013-28, Street Repair/Replacement (Hicks). **Mr. Hicks made a motion to approve Ordinance 2013-28, Mr. Heist offered a second to the motion.** After asking for any further discussion or questions and hearing none, the Mayor called for a roll call vote.

Mrs. Boerger:	Yes	Ms. Burns:	Yes
Mr. Heist:	Yes	Mr. Hicks:	Yes
Mr. Hummeldorf:	Absent	Mrs. Nachazel:	Yes
Mr. Rice:	Absent	Mr. Zahler:	Absent
Ayes: 5	Nays: 0	Absent: 3	Motion Passed

Mr. Moriconi gave an update on the proposed Highland Avenue Widening. There was discussion and Mayor Wiest recommended sending it to the Public Safety Committee for review.

Mr. Eric Schlinger appeared before Council regarding the proposed widening of Highland Avenue. He advised that he was encouraged by the recommendation to do more study on the issue. He stated that he disagrees with the idea of taking land for a temporary fix and that putting a sidewalk against the road is a potential safety issue.

Mr. Stoeckle appeared before Council regarding the widening of Highland Avenue. He stated that he is opposed to spending any funds on something that is only an issue fifteen to twenty minutes a day for two hundred days a year. In his opinion it would be a big waste of a lot of money for a small problem.

Mr. Larry Lucas appeared before Council regarding the proposed widening of Highland Avenue. Mr. Lucas is the owner of the building at 1 Highland and is opposed to the widening of Highland Avenue. He feels very put upon because the City wants to take part of his property because of a problem created by Council approving a bad decision years ago by putting all those houses at the back of Highland Avenue. If the City wants to buy his building he would be happy to sell it for the right price.

Mrs. Diane Becker appeared before Council regarding the proposed widening of Highland Avenue and voiced her opposition to the project. Traffic flow on the Dixie Highway is such at that time of the morning that a third lane will not help with the backup on Highland. She stated that the City should not have spent any money on this without asking the residents for their input.

Mr. Kyle Taylor appeared before Council regarding the widening of Highland Avenue and expressed that a traffic study should be conducted, but the study needs to include a variety of times and days of the week in order to provide a whole picture and not just half an answer.

Mayor Wiest again suggested that the issue be sent to the Public Safety Committee. Mr. Frank Hicks made a **motion that the Highland Avenue issue** and traffic flow in general be sent to the Public Safety Committee to review and that funding be approved sufficient to study the traffic issue. Mrs. Nachazel offered a second. The motion carried by unanimous voice vote.

Mayor Wiest asked that anyone wishing to attend the Public Safety Committee meeting to please leave their email addresses with Debbie Krueger this evening and they will be notified when a meeting date is set.

Mr. Ziegler performed a first reading of **Ordinance 2013-25--Setting Council Size** (Hummeldorf, Burns, Hicks).

Mr. Ziegler performed a first reading of **Ordinance 2013-26-Council/Fire Stipends** (Hummeldorf, Hicks)

Mr. Ziegler performed a first reading of **Ordinance 2013-27-Mayor Stipend** (Hummeldorf, Hicks)

Mr. Eric Schlinger appeared before Council to express his opposition to Ordinance 2013-25. Council discussed the ordinance with Mr. Schlinger.

Mr. David Stoeckle appeared before Council to express his opposition to Ordinance 2013-25 and Ordinance 2013-26. Council discussed the ordinances with Mr. Stoeckle.

Mrs. Vicki Boerger stated that she sent an email to Mr. Moriconi stating that Ordinances 2013-26 should be split into two (2) separate Ordinances. Mr. Moriconi indicated that he did not receive the email that Mrs. Boerger is referencing.

Ms. Mary Burns stated that she would like to see Ordinances 2013-26 made into two (2) separate Ordinances.

Mrs. Vicki Boerger questioned that when these Ordinances were tabled on September 23, 2013 they were single page documents and she would like to know who added the content that was read tonight. Mr. Frank Hicks stated that he requested the added content.

Mrs. Renee Oka appeared before Council to express her opposition to Ordinance 2013-25 and Ordinance 2013-26. Council discussed the ordinances with Mrs. Oka.

Mr. Joe Oka appeared before Council to express his opposition to Ordinance 2013-25 and Ordinances 2013-26. Council discussed the ordinances with Mr. Oka.

Mrs. Diane Becker appeared before Council to express her opposition to Ordinances 2013-25, Ordinance 2013-26 and 2013-27. Council discussed the ordinances with Mrs. Becker.

Mr. Tom Wurtz appeared before Council to express his opposition to Ordinances 2013-25. Council discussed Ordinance 2013-25 with Mr. Wurtz.

Mr. Tom McGovern appeared before Council to express his opposition to Ordinance 2013-25. Council discussed Ordinance 2013-25 with Mr. McGovern.

Mr. Scott Menkhaus appeared before Council representing the Fort Mitchell Volunteer Firefighters to express their opposition to Ordinances 2013-26 including Council with Fire Department Stipends. Council discussed the ordinance with Mr. Menkhaus. Mrs. Boerger thanked the volunteers.

Mr. Moriconi read an email from Mr. Jim Hummeldorf.

Council discussed Ordinances 2013-25, 2013-26 and 2013-27.

Mr. Ziegler performed a first reading of **Ordinance 2013-29-Setting Meeting Schedule (Boerger)**. Mrs. Boerger stated that having nine (9) Special Meetings in the last nine (9) months is an indication that more meetings are required. There was discussion on proposed Ordinance 2013-29. Mr. Hicks made a motion to postpone indefinitely **Ordinances 2013-29, Setting Meeting Schedule (Boerger)** indefinitely. Mr. Heist offered a second to the motion. After asking for any further discussion or questions and hearing none, the Mayor called for a roll call vote.

Mrs. Boerger:	No	Ms. Burns:	Abstain
Mr. Heist:	Yes	Mr. Hicks:	Yes
Mr. Hummeldorf:	Absent	Mrs. Nachazel:	No
Mr. Rice:	Absent	Mr. Zahler:	Absent

Mayor Wiest declined to break the tie vote stating this should be a decision of the whole Council.

Mr. Heist made the motion to adjourn the Regular City Council Meeting. Mr. Hicks offered a second to the motion. After asking for discussion or questions and hearing none, the Mayor called for a voice vote. The motion carried by unanimous voice vote. The meeting was adjourned at 9:16 pm.

Signed _____, 2013

Christopher Wiest, Mayor

Minutes Prepared and
Signature Witnessed By:

Debbie Krueger, Deputy City Clerk

Before we get into zoning, and specifically the Drawbridge MBLU ordinance, Mr. Ziegler has advised that I make some public statements, and that we, in essence, ask the City Council some questions to ensure that we are following the law in this zoning process. Let me apologize to both the public, and Council, for this. For the public's information, when we do zoning issues, the issues are not merely legislative issues, but also adjudicatory issues, and there is a fairly strict process that must be adhered to. First, there is a proposal, which either is initiated by the City Council, or by a project proponent. In this case, the City, in attempting to obtain control over the Drawbridge project, submitted a zone change to, in effect, require Stage I and Stage II Development Plans for the Drawbridge redevelopment project. And the City Council took that action at the August, regular meeting.

Thereafter, a public hearing was held at NKAPC, before the Kenton County Planning Commission on September 5, 2013. That hearing was public, it was advertized, both in the newspapers and with signage in and around the Drawbridge parcel. The hearing took not just live comments for and/or against the proposal, but also read letters into evidence. The hearing down there is akin to a mini trial, and it is required by the KRS.

Thereafter, the proposal came back to the City Council, for first reading September 23, 2013. Now, once it comes back, we can make minor changes to the zoning, but cannot make any changes that are deemed material, which, legally, means that it is something of substance that changes the proposal in something other than a minor way – something other than a clarification. If we make major changes, then the entire process needs to start anew – with yet another hearing before the Kenton County Planning Commission – and, by the way, for the public, these hearings do not happen overnight, they are typically held about one month after the City puts in its application.

On Wednesday, October 2, 2013, Mr. Moriconi and I received a comment letter via electronic mail from Joe Hayes, of 123 Park Road, concerning the Drawbridge Zoning, and that letter asked us to forward his letter onto City Council. Recognizing the legal issue, I called Mr. Ziegler, our City Attorney, and asked his advice. His advice was not to forward the letter onto Council, because it involved pending zoning, and involved items not discussed or interjected at the public hearing. Mr. Ziegler's advice was that providing the letter to Council, and Council's consideration of it, would be akin to accepting comments on the zoning proposal outside of the legal hearing process. Of course, if Council were to consider the letter prior to making a final decision on the zoning, it would provide a substantial basis for a challenger of the zoning – perhaps the developers who may not want to obtain the approval of the City for a possible project – and may leave the City open to the developers doing whatever they wanted, and, equally problematically may cause the City to have to defend, a costly, perhaps up to \$100,000 or more, zoning lawsuit.

I explained the issue to Mr. Hayes and the potential cost to the city, as well as the fact that it could leave the city exposed to the developer doing whatever he wanted. Nevertheless, Mr.

Hayes then decided to send members of the City Council his letter to your various homes. This presents an issue, and one we need to address this evening. Therefore, I need to ask each and every one of you, who may or may not have seen this letter, to disregard it. Can each of you promise to completely disregard this letter prior to considering and voting upon, Ordinance 2013-22, and consider only the evidence and arguments put forward at the public hearing on this issue? If not, you will need to recuse yourself, and we may need to schedule a special meeting on the zoning ordinances. <ASK EACH COUNCIL MEMBER>