

KETTERING CITY COUNCIL  
REGULAR MEETING MINUTES  
November 27, 2007

The Council of the City of Kettering, Ohio, met in regular session on Tuesday, November 27, 2007, at 7:30 p.m. in the Council Chambers of the Kettering Government Center, 3600 Shroyer Road. The Mayor, Donald E. Patterson, presided and the Clerk of Council, Connie S. Gaw, recorded. This meeting was telecast live on the cable access channel.

Council Members Present: Duke, Klepacz, Lehner, Spolrich, Thompson and Wanamaker

Council Members Absent:

Total Members Present: Seven (7)

Mayor Patterson led the audience in the Pledge of Allegiance and then gave the invocation. He introduced the cable TV operators, Bill Greger, Earl Jones and Joe McKenzie. He thanked these volunteers for their assistance.

APPROVAL OF MINUTES

PROCLAMATIONS, SPECIAL PRESENTATIONS, AWARDS, SPECIAL RESOLUTIONS, APPOINTMENTS TO BOARDS AND COMMISSIONS

PRESENTATION – Volunteer Office/Mayors Award for Volunteer Service – Bonnie Pittl, Volunteer Services Manager gave the presentation this evening and explained the Mayor's Award for Volunteer Service is only given out once a year to show appreciation to those volunteers who give exceptional service to our community. This year's award will be presented to Allan and Mary Kay Feller.

MAYOR'S AWARD FOR VOLUNTEER SERVICE – Allan and Mary Kay Feller  
Mayor Patterson read the above award and same was accepted by Allan and Mary Kay Feller. He thanked them for the giving of their time and talents to volunteer for the City of Kettering.

PRESENTATION – Blue Star Mothers of America – Miami Valley Chapter #3 – Bev Peyton, President of the Blue Star Mothers of America gave the presentation this evening and explained they are mothers who have or had children in the military. They support our troops and know first hand the sacrifices that are made for our freedom. She thanked Town & Country Shopping Center and the City of Kettering for supporting them during this year's "Make a Difference Day." They appreciate the love and support of the community.

PUBLIC HEARINGS

PUBLIC HEARING – Appealing the decision made by the Board of Zoning Appeals in BZA Case No. 3949 to approve a family care home as a conditional use at 324 Lincoln Park Blvd.

Mayor Patterson stated this item is a hearing on an appeal of a decision made by the Kettering Board of Zoning Appeals. Miami Valley In-Ovations owns property located at 324 Lincoln Park Blvd. and wishes to use its property as a family care home. The application filed by Miami Valley In-Ovations for conditional use approval was forwarded to the Board of Zoning Appeals for their consideration. The BZA conducted a public hearing on the conditional use application on October 22, 2007 of this year. At the conclusion of the October 22, 2007 BZA hearing, the Board approved the conditional use request by Miami Valley In-Ovations. The vote was a

unanimous approval by all Board members attending the meeting, voting yes. Mr. Sam Licklitter, a resident of Lincoln Park Boulevard, has appealed that particular BZA decision to City Council. Tonight, City Council will conduct a public hearing on this appeal. Council's role in this appeal matter is not to act as a legislative body. This means, for example, that Council will not adopt any new or amended Zoning Code regulations by its decision on this appeal. Neither will City Council judge whether a family care home on this particular property is appropriate. But, City Council's role in this appeal is to act as a quasi-judicial body. This means the Council is asked to determine if the Board of Zoning Appeals properly decided the application for family care home approval that was filed by Miami Valley In-Ovations. In other words, City Council's role is to judge whether the BZA acted appropriately. To determine if the BZA properly decided the issue, tonight we will receive testimony and evidence from interested parties, however, our focus will be on whether the BZA followed the procedures and criteria set out in the Zoning Code. The procedures for tonight's hearing will be as follows: First – City staff will make a brief presentation of the case and will present the position of the Kettering Zoning Administrator. Second – typically, the appellant, Mr. Licklitter, would be given the opportunity at this point in the hearing to present his evidence and his arguments regarding his appeal. But, Mr. Licklitter has informed City Council that he will not be attending tonight's hearing. Third – persons in attendance tonight that desire to make comments and express their opinion on this appeal may do so. They can also offer other relevant information and evidence to Council. The Council asks that all persons in the audience that wish to comment on this appeal limit their comments to no more than 5 minutes in length. Fourth – The public hearing will be closed at the conclusion of all testimony and introduction of evidence. Then, City Council will make a decision on this appeal at its next regularly scheduled meeting on December 11, 2007. During this hearing tonight members of Council may direct questions to City staff members or persons commenting to Council. Council members may also discuss among themselves issues related to this appeal. Mr. Licklitter, the person appealing the BZA decision, is unable to attend tonight's hearing because of his personal schedule. If Mr. Licklitter had been able to attend tonight's hearing he would have been given the opportunity to come to the podium and to offer testimony, offer evidence and present his arguments to support his appeal. But since he will not be attending the hearing he has been given the opportunity to present in writing his arguments in support of his appeal. He has done that, he has presented his case in writing to City Council and he has also filed with City Council a written response to the position of the Zoning Administrator. Council has received both of those documents. Mr. Licklitter was also given the opportunity to be represented by Counsel or other form of representation; however, it appears he has decided not to have separate representation. Tonight, all persons who wish to make a comment on this matter must be sworn in and will be asked to take an oath regarding their testimony. So, at this time, I ask that any person giving testimony about this appeal or wishing to speak to Council on this appeal, or present their opinions or offer facts about the appeal, please stand in their place, raise their right hand and take an oath which he will ask them to repeat. He asked those speaking to City Council about tonight's appeal, please raise their right hand and repeat after him. The oath was given. He stated before the public hearing begins, he wanted to make one additional comment. The issue of conditional use approval for a family care home is a very encompassing issue. Many may have questions about the property or about Miami Valley In-Ovations that the City is simply unable to answer. The City is in a position to respond only to questions or comments that are related to matters that the City is directly involved in. For example, the City can address issues related to land use, zoning, building code compliance, or property maintenance code compliance. That's because these are matters over which the City has legal authority to set policy and to enforce. But, there are many extraneous issues to which the City cannot respond. For example, the City isn't in a position to respond to questions about MRDD policy, or criteria for selection of residents, or State of Ohio regulations, or the skill or training of professional staff that may assist the residents of the family care home. The City doesn't set policy for these types of issues and doesn't have any enforcement power for these types of issues. The City isn't authorized to deal with these types of issues. It would be inappropriate for City staff members to respond to these types of issues. Also, trying to address these types of extraneous issues is simply not relevant to the narrow scope of what

Council's role is in this appeal. With that said, let us begin by having a report from Mr. David Roller.

Mr. David Roller, City Planner, Planning and Development Department reported this hearing is for the appeal of the decision by the BZA to approve a family care home as a conditional use for the property located at 324 Lincoln Park Blvd. First, he stated he will respond to Mr. Lickliter's appeal or four assignments of error. Second, he will review BZA's process regarding this matter. Mr. Lickliter claims that the BZA violated its own rules of order regarding this case rendering their vote illegal. At the beginning of the hearing, the Board stated the rules of procedure. 1. Staff Presentation. 2. Audience to comment both in favor and in opposition. 3. The public comments portion would close. 4. The Board would give report and then discussion as appropriate. During Board discussion, Mr. Evers expressed regret that the applicant, MVIO, was not present at the meeting. In direct response to Mr. Evers, Marti Goetz, MVIO General Manager, unexpectedly rose and stated that MVIO was indeed present but had chosen not to speak. The meeting resumed and a vote was taken. The Board did not solicit her statement. She expressed no opinion in either favor or in opposition. The Board did not violate their rules of order because Ms. Goetz was not asked for her statement nor was her statement meant to sway the Board's vote and therefore was of no consequence. Mr. Lickliter's second assignment of error is that he did not receive, by the date he expected, a response to his inquires from the Zoning Administrator and thus was not prepared to present his case. Information was not available at the time of this request. Despite Mr. Lickliter's assertion the application was not complete until two business days before the hearing. This is not uncommon, staff receives many applications that are not complete. This delay prohibited response to Mr. Lickliter. However, with respect to Mr. Lickliter, responsibility for presenting his case before the administrative body lies with him. There are other avenues for gathering information and data. In fact many of the questions he asked within his letter are outside of the scope of our review. Many of those questions could have been answered by other agencies or entities. Mr. Lickliter's third assignment of error is that MVIO did not fill out the application correctly by leaving a section blank. This section was not required because it deals with variances. This was a conditional use approval and therefore was not required to be filled out. Mr. Lickliter's fourth assignment of error is that MVIO is a business and is in violation of our Zoning Code. This is irrelevant because many entities own residential property such as the Government, Churches, Synagogues, Trusts or Estates. The type of owner has no bearing on a property's use. In this case the property's use is strictly residential. Also, the allegation that people are paying to live there so it is a business is not logical. If this logic were applied, then all apartments in Kettering are illegal. Renters exchanging income for the use of a residence as living quarters does not classify a property as a business. Mr. Roller then reviewed the processes of the BZA. This request was for a conditional use approval. According to code, a conditional use must be approved if it meets all of our criteria. For approval of a Family Care Home, they must meet 15 conditions for approval. The applicant met or exceeded the requirements in all 15 of these conditions. The Board found that all requirements were met. In conclusion: One, the basis of the arguments in each of the four assignments of error supplied by Mr. Lickliter is either incorrect or irrelevant. The appeal therefore should be dismissed. Two, all requirements of our Zoning Code were satisfied by MVIO in their submittal and as such the BZA voted for approval with a unanimous vote. In that regard there is no evidence that the Board acted in error. The Zoning Administrator agrees with the conclusion and asks that the appeal be dismissed. Mr. Rollers asked that Council receive as evidence and enter into the record the brief of the Zoning Administrator that was distributed prior to this hearing.

Mayor Patterson asked for questions or concerns from the Public.

Marti Goetz – 7550 S. Co. Rd. 25A, Tipp City - Miami Valley In-Ovations – She expressed appreciation for the decision of the Board of Zoning Appeals. They will have four tenants in this home that will live in a family style mode and work during the day. Some of the tenants are from Kettering. One tenant has elderly parents that could no longer take care of him. Formally, they object to the process of the BZA.

Many cities are in compliance with Fair Housing laws and she feels having to get conditional use approval is unnecessary.

Mark Gerhardstein, 6906 Marrow Dr. Dayton – He indicated he is with MRDD and supports the position of Mr. Roller. The MRDD serves 2,800 people with mental disabilities. Over 800 are on a waiting list for service. In Kettering there are 80 people who receive training through MRDD. There are 117 people living in Kettering that need residential services. The stars in our community are people with mental retardation and their families. These people are our brothers, sister, aunts and uncles. They are our family; our community and they need our help.

Mrs. Lehner stated there are a lot of people on the waiting list. Is that because of lack of funding or lack of reliable homes?

Mr. Garrett replied both. With the passage of the human services levy, caregivers that are 70 and over will get support. Housing is purchased by non-profit organizations. The tenants that live there help in selecting the housing and the caregiver that lives there with them.

Mr. Duke asked what happens when the disabled support system passes away or can no longer take care of them?

Mr. Garrett replied that families will take care of their own until they can't take care of them anymore. If this happens, the disabled are sent to an emergency shelter. This shelter can house up to 10 people. They are then placed in a residential location if there is no other family member that can take care of them. Many families worry about what will happen to their adult child with disabilities when they are gone.

Mayor Patterson asked for any additional comments. None were heard.

There being no further discussion, Mayor Patterson closed the public hearing and advised that Council would render a decision at the December 11, 2007 Council Meeting.

#### ORDINANCES IN SECOND READING

##### AN ORDINANCE

NO: 4086-07

BY: MR. WANAMAKER AND MRS. LEHNER

AUTHORIZING THE CITY OF KETTERING TO PICK-UP THE STATUTORILY REQUIRED CONTRIBUTION TO THE OHIO PUBLIC EMPLOYEES RETIREMENT SYSTEM FOR THE EMPLOYEES OF THE CITY OF KETTERING PURSUANT TO INTERNAL REVENUE CODE SECTION 414(h)(2).

Mr. Wanamaker read the above ordinance and moved for approval. Mrs. Lehner seconded the motion.

There being no discussion on the motion, the following votes were recorded: Mr. Thompson, Yea; Mr. Klepacz, Yea; Mr. Duke, Yea; Mr. Wanamaker, Yea; Mrs. Lehner, Yea; Mr. Spolrich, Yea; Mayor Patterson, Yea. There being seven (7) Yea votes and no (0) Nay votes, the motion was declared carried and the Ordinance duly adopted.

AN ORDINANCE  
NO: 4087-07  
BY: MRS. LEHNER AND MR. SPOLRICH

TO AMEND THE REGULATIONS OF ECONOMIC DEVELOPMENT  
OVERLAY DISTRICT NO. 15 BY REPEALING AND REPLACING THE LAND  
USE, DEVELOPMENT AND ZONING PROVISIONS FOR SAID SAME  
OVERLAY DISTRICT.

Mrs. Lehner read the above ordinance and moved for approval. Mr. Spolrich seconded the motion.

There being no discussion on the motion, the following votes were recorded: Mr. Spolrich, Yea; Mrs. Lehner, Yea; Mr. Wanamaker, Yea; Mr. Duke, Yea; Mr. Klepacz, Yea; Mr. Thompson, Yea; Mayor Patterson, Yea. There being seven (7) Yea votes, no (0) Nay votes, the motion was declared carried and the ordinance duly adopted.

RESOLUTIONS

A RESOLUTION  
NO: 8341-07  
BY: MR. SPOLRICH AND MR. THOMPSON

AUTHORIZING THE CITY MANAGER TO ACCEPT FUNDS FROM THE  
KETTERING PARKS FOUNDATION TO COMPENSATE A GRANT WRITER

Mr. Spolrich read the above resolution and moved for approval. Mr. Thompson seconded the motion.

Mr. Schwieterman explained a grant writer has been hired by the City of Kettering to apply for grants to help fund the land lab and other PRCA related projects. This resolution authorized the City Manager to accept \$5,000 from the Kettering Parks Foundation with the funds being used to assist towards the payment of the grant writer.

There being no discussion on the motion, the following votes were recorded: Mr. Thompson, Yea; Mr. Klepacz, Yea; Mr. Duke, Yea; Mr. Wanamaker, Yea; Mrs. Lehner, Yea; Mr. Spolrich, Yea; Mayor Patterson, Yea. There being seven (7) Yea votes and no (0) Nay votes, the motion was declared carried and the resolution duly adopted.

ORDINANCES IN FIRST READING

AN ORDINANCE  
  
TO ADOPT AN ALTERNATIVE METHOD BY WHICH THE CITY OF  
KETTERING MAY CALCULATE AND LEVY SPECIAL ASSESSMENTS.

Mr. Thompson read the above ordinance in first reading. The ordinance will appear on the December 11, 2007, Council meeting agenda for second reading.

Mr. Bergstresser explained this ordinance will adopt an alternative method for calculating special assessments for roadway reconstruction projects. The existing policy uses the cost per foot of frontage, currently charging residents \$66.00 per foot of frontage. The new alternative method will determine the total number of residents in an assessment area, the property value of an individual parcel and the amount of pavement area for that parcel. This new method of calculating is a more equitable for all residents. He asked for any questions from Council.

Mr. Klepacz expressed this all sounds very complicated and he appreciates staff's hard work to address some perceived inequities. We will see more equal opportunities as we go forward.

Mayor Patterson thanked Mr. Bergstresser for coming up with a more equitable plan for our assessment policy. He appreciated all staff time that was put into this project.

Mr. Thompson stated that over the years Council has had concerns on how property owners were assessed. He feels they have solved some of the concerns.

Mr. Wanamaker stated he feels it is a very good plan and commended Mr. Bergstresser.

## CERTIFICATIONS AND PETITIONS

### MANAGER'S REPORT

Mr. Mark Schwieterman, City Manager reported:

Assessment Project – He thanked Mr. Bergstresser and his staff for all of their hard work on improving the process of assessments. They spent many hours going through the process and looking for ways to improve it.

Mr. Schwieterman turned the meeting over to Police Chief O'Dell.

Chief O'Dell stated at the last Council meeting on November 20, 2007 a citizen came forward and made allegations against a Kettering Police Officer, which happened during a Tenant/Landlord dispute. An investigation was done, witnesses were interviewed and it was found that the officers acted appropriately. The citizens account was not accurate and the Police Department will be sending him a letter to that affect. Police Chief O'Dell thanked the Mayor and Council for allowing him to set the record straight this evening.

Mayor Patterson stated it is important that the allegations were addressed and found untrue for the integrity of our police force. Council welcomes citizen comments but do not appreciate comments that are untrue.

## OTHER BUSINESS NOT ON WRITTEN AGENDA

### Communications and Reports

#### Audience Participation (5 Minute Limit Per Speaker)

Joseph Koussa, 1537 Beaver Creek Lane - He asked God to keep an eye on all of the military men and women throughout the world fighting for our safety and freedom. He prays for their safe return. There is too much negative campaigning from people running for office. He does not like the name-calling and mud slinging. Many women did not vote in the last election because they felt they did not have a good choice. He feels people forget the police are our angels and are here for our safety. They should not complain about them and should listen to what they say. God Bless America.

## COUNCIL COMMITTEE REPORTS

Mr. Wanamaker – No Report.

Mrs. Lehner – No Report.

Mr. Spolrich – No Report.

Mr. Thompson – No Report.

Mr. Klepacz – No Report.

Mr. Duke – No Report.

Mayor Patterson – Reminded citizens to attend the Mayor's Christmas Tree Lighting festivities on November 30, 2007. Festivities begin at 6:00 p.m., with the tree lighting at 6:30 p.m. It will get everyone in the Christmas spirit.

There being no further business to come before this meeting of the Kettering City Council, Mayor Patterson adjourned the meeting at 9:03 p.m.

ATTEST:

Connie S. Gaw  
Clerk of Council

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DONALD E. PATTERSON, MAYOR