

KETTERING CITY COUNCIL  
REGULAR MEETING MINUTES  
December 9, 2008

The Council of the City of Kettering, Ohio, met in regular session on Tuesday, December 9, 2008, 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: Mayor Patterson, Duke, Klepacz, Thompson and Spolrich and Wanamaker

Council Members Absent:

Total Members Present: Six (6)

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 John Golub. He welcomed page Chelsea Flenar from Kettering Fairmont High School. He thanked these volunteers for their assistance.

The Kettering Children's Choir opened the meeting by singing several Christmas carols.

#### APPROVAL OF MINUTES

November 18, 2008 – Regular and Workshop Minutes

November 25, 2008 – Regular and Workshop Minutes

December 2, 2008 – Special Meeting Minutes

Mr. Spolrich reported that he reviewed the above minutes and moved the minutes be approved. Mr. Thompson seconded the motion and there being six (6) yea votes and no (0) nay votes, the motion was declared carried by a majority roll call vote.

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

#### PUBLIC HEARINGS

Appealing the decision made by the Board of Zoning Appeals in BZA Case No. 3987.

Mayor Patterson explained a public hearing would be held this evening on an appeal by Michael Barnett from a decision made by the Board of Zoning Appeals. City Staff and the appellant will both have fifteen minutes each to present their case. After the presentation, Council will take comments from the public. Council will not make a decision on this appeal tonight.

Mayor Patterson opened the Public Hearing. He asked that any person that intended to speak to City Council this evening about this appeal to please stand to take an oath. He administered the oath to Mr. Robillard and Mr. Barnett.

Mr. Tom, Robillard, Planning and Development Director presented the case this evening. He explained in 2004 Mr. Barnett requested a building permit to construct a 24' wide by 100' long detached garage in the rear yard space of his property at 4765 Wilmington Pike. This request was denied by the City and appealed to the BZA. The Board of Zoning Appeals also denied this request. In 2005 Mr. Barnett changed his plans to an "L" shape design producing a storage building containing 2400 sq. ft., which was approved by City Staff. On September 5, 2008 Mr. Barnett requested another building permit to construct an additional garage 30' wide by 75' long, attached to the north side of his home. On October 13, 2008 the Kettering Zoning Administrator denied the building permit on the grounds that the "construction is not a permitted use of the property at this address." Based on the amount of enclosed storage space already existing on this property, the Zoning Administrator determined that the large amount of new enclosed storage would establish a non-permitted use on the subject property. On October 21, 2008 Mr. Barnett completed a Board of Zoning Appeals application appealing the decision of the Zoning Administrator. On November 10, 2008 the Board

of Zoning Appeals upheld the Zoning Administrator's decision "since the proposed structure would not accommodate a permitted use of an R-1 zoned property as mandated by Codified Ordinance. Staff feels this case involves land use, and whether the proposed storage space is a permitted use of the property. If the garage addition were approved, the amount of enclosed storage space on the subject property would be increased by 2250 sq. ft., making the total of all enclosed storage space 5298 sq. ft., which amounts to 67% of the floor area on the property being available for vehicle storage, and only 33% for living. The accessory use exceeds the primary use, which is not permitted. Therefore, City Council should uphold the Board of Zoning Appeal's decision to deny the building permit based on the fact that the resulting building would produce a non-permitted use in the R-1 District.

The appellant, Mike Barnett, 4765 Wilmington Pike presented his case. He feels there are to many discrepancies in this report. How much living space does one really need? He can live in the garage if he wants to because it's just him. He has twenty-two cars on his premises and would like another garage to separate his corvettes. Mr. Barnett showed a magazine article to Council that inspired him to request this new addition. He lives across the street from businesses that look much worse than a garage would look. He does not think much of the Board of Zoning Appeals and is not sure why they are even needed. He is a taxpayer and should not have to pay \$75.00 just to appeal a decision. Staff keeps yelling about the living space of his house. He might just decide to live out in the garage with his corvettes. He thinks Mr. Hundt the Zoning Administrator is not letting him have this addition just because he doesn't like him and doesn't want him to have the garage addition. The City hates cars. He collects very valuable cars and would like to have a garage to store them in.

Mayor Patterson explained to Mr. Barnett it is not a question of the living space but how much garage space being requested. He read the magazine article and the person in that article had to purchase the adjoining neighbors property in order to have enough space to build.

Mr. Barnett replied this article inspired him to build a bigger garage so his cars won't be packed in like sardines. He feels the code allows him to build this. Mr. Hundt just does not like him.

Mr. Robillard explained the Zoning Administrator, Mr. Hundt reviews the application to make sure the request meets the code. If he determines that it does not meet the code the applicant can then appeal to the Board of Zoning Appeals.

Mayor Patterson stated to Mr. Barnett, a decision was made from a determination of City Code, not because he is not liked.

Mr. Robillard explained in this case the problem is not the setbacks but a land use issue. The primary use of this request is garage storage. A use variance is not permitted by City Code.

Mr. Duke stated it appears Mr. Barnett loves his automobiles very much. Right now he has his automobiles in one garage and if this is approved there will be two garages. There would be more work running back and forth between the two.

Mr. Klepacz wanted to understand the problem is if the storage space exceeds the living space then it is not permitted.

Mr. Robillard replied this is correct. The primary use should be the living space.

Mr. Duke stated he understands a garage is not permitted in an R-1 District as a primary use. But what if a person has a large garage, tennis court and a swimming pool. This would be a larger use than the house. Would it be allowed because it would be recreational?

Mr. Robillard replied if the pool exceeded the size of the house then it is to big and would not be allowed.

Mr. Dave Eubank summarized to Council, this case is not a question of land use as permitted by the zoning code. It is zoned residential with residential types of uses. Single-family homes are permitted. Adding the proposed building brings into question as to what is the primary use of the property and does it fit with the City's Zoning Code. The square footage of the total amount of storage on the property will become so large the residential use on the property will no longer be the primary use. It will then be a storage use and it is not permitted. It does not matter what he stores, it is not permitted in a residential district. This request would shift the primary use of the property to storage and it is not permitted in an R-1 District.

Mr. Barnett expressed this garage is intended for his private cars. He is not storing other people's cars. The code says he can build it. He has been told by legal council to stick with the codes. The storage issue is crap.

Mayor Patterson stated Council received a letter regarding this public hearing and it will be entered into the record.

Mayor Patterson closed the Public Hearing and expressed a decision will be made at a future Council meeting.

### ORDINANCES IN SECOND READING

#### RESOLUTIONS

A RESOLUTION  
NO: 8526 -08  
BY: MR. DUKE AND MR. SPOLRICH

AUTHORIZING THE CITY MANAGER TO SUBMIT A PRIORITY APPLICATION TO THE DAYTON DEVELOPMENT COALITION AND A MORE COMPLETE FOLLOW-UP APPLICATION TO OUR CONGRESSIONAL REPRESENTATIVE FOR FEDERAL EARMARK FUNDS FOR THE "KETTERING BUSINESS PARK (FORMER DESC MILITARY SUPPLY DEPOT) REDEVELOPMENT – SITE PREPARATION AND INFRASTRUCTURE PROJECT"

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

Mr. Schwieterman explained the City is seeking money to provide infrastructure upgrades to make former building sites into competitive sites for new development. Upgrades include rebuilding roadways and utility installation.

There being no discussion on the motion, the following votes were recorded: Mr. Thompson, Yea; Mr. Klepacz, Yea; Mr. Duke, Yea; Mr. Spolrich, Yea; Mr. Wanamaker, Yea; Mayor Patterson, Yea There being six (6) Yea votes, and no (0) Nay votes, the motion was declared carried and the resolution duly adopted.

A RESOLUTION  
NO: 8527-08  
BY: MR. SPOLRICH AND MR. THOMPSON

AUTHORIZING THE CITY MANAGER TO PURCHASE REAL PROPERTY INTERESTS IN CONNECTION WITH THE "SOUTH DIXIE DRIVE – PHASE 3 RECONSTRUCTION PROJECT" (CITY PROJECT NO. 02-104EC, ODOT PID NO. 81028)

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

Mr. Schwieterman explained this resolution authorizes the purchase of permanent and temporary right-of-way from Parcel Number 78, FAJ Properties, Inc/Capri Lanes and from Parcel No. 76, Pedro and Marie Torres, for the South Dixie Drive Reconstruction Project.

There being no discussion on the motion, the following votes were recorded: Mr. Spolrich, Yea; Mr. Duke, Yea; Mr. Klepacz, Yea; Mr. Thompson, Yea; Mr. Wanamaker; Yea; Mayor Patterson, Yea. There being six (6) Yea votes, and no (0) Nay votes, the motion was declared carried and the resolution duly adopted.

A RESOLUTION  
NO: 8528-08  
BY: MR. THOMPSON AND MR. KLEPACZ

AUTHORIZING THE CITY MANAGER TO PURCHASE REAL PROPERTY INTERESTS IN CONNECTION WITH THE "EAST DOROTHY LANE AND WILMINGTON PIKE INTERSECTION IMPROVEMENTS" (CITY PROJECT NO. 02-120I, ODOT PID NO. 81024)

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

Mr. Schwieterman explained this resolution authorized the purchase of permanent and temporary right-of-way from Parcel No 56, Jeffrey L and Jay B. Hurst – 2852 Haig Avenue for the East Dorothy Lane/Wilmington Pike Intersection Improvements Project.

There being no discussion on the motion, the following votes were recorded: Mr. Thompson, Yea; Mr. Klepacz, Yea; Mr. Duke, Yea; Mr. Spolrich, Yea; Mr. Wanamaker, Yea; Mayor Patterson, Yea There being six (6) Yea votes, and no (0) Nay votes, the motion was declared carried and the resolution duly adopted.

A RESOLUTION  
NO: 8529-08  
BY: MR. WANAMAKER AND MR. DUKE

REAPPOINTING DONALD E. PATTERSON AND APPOINTING TONY KLEPACZ TO SERVE AS TRUSTEES OF THE KETTERING DEVELOPMENT CORPORATION

Mr. Wanamaker read the above resolution and moved for approval. Mr. Duke seconded the motion.

Mr. Schwieterman explained this resolution will reappoint Mayor Patterson to a two-year term with term office ending on December 31, 2010 and appoint Councilmember Klepacz to fill Mrs. Lehner's unexpired term, plus a new two-year term beginning on January 1, 2009 and expiring on December 31, 2010.

There being no discussion on the motion, the following votes were recorded: Mr. Spolrich, Yea; Mr. Duke, Yea; Mr. Klepacz, Abstain; Mr. Thompson, Yea; Mr. Wanamaker; Yea; Mayor Patterson, Abstain. There being four (4) Yea votes, two (2) Abstain votes, and no (0) Nay votes, the motion was declared carried and the resolution duly adopted.

A RESOLUTION  
NO: 8530-08  
BY: MR. KLEPACZ AND MR. WANAMAKER

AUTHORIZING THE CITY MANAGER TO ACCEPT A \$2,500.00 GRANT FROM THE KETTERING PARKS FOUNDATION TO ADMINISTER A FINANCIAL ASSISTANCE PROGRAM FOR LOW-INCOME KETTERING RESIDENTS

Mr. Klepacz read the above resolution and moved for approval. Mr. Duke seconded the motion.

Mr. Schwieterman explained this resolution will allow the City to accept this grant from the Kettering Parks Foundation and to enter into an agreement with the Parks Foundation to administer the grant.

There being no discussion on the motion, the following votes were recorded: Mr. Thompson, Yea; Mr. Klepacz, Yea; Mr. Duke, Yea; Mr. Spolrich, Yea; Mr. Wanamaker, Yea; Mayor Patterson, Yea There being six (6) Yea votes, and no (0) Nay votes, the motion was declared carried and the resolution duly adopted.

A RESOLUTION  
NO: 8531-08  
BY: MR. DUKE AND MR. SPOLRICH

TO MAKE SUPPLEMENTAL APPROPRIATIONS FOR CURRENT  
EXPENSES AND OTHER EXPENDITURES OF THE CITY OF KETTERING,  
STATE OF OHIO, DURING THE FISCAL YEAR ENDING DECEMBER 31,  
2008

Mr. Klepacz read the above resolution and moved for approval. Mr. Duke seconded the motion.

Mr. Schwieterman explained this will allow the appropriation of the monies related to the grant from the Kettering Parks Foundation.

There being no discussion on the motion, the following votes were recorded: Mr. Thompson, Yea; Mr. Klepacz, Yea; Mr. Duke, Yea; Mr. Spolrich, Yea; Mr. Wanamaker, Yea; Mayor Patterson, Yea There being six (6) Yea votes, and no (0) Nay votes, the motion was declared carried and the resolution duly adopted.

ORDINANCES IN FIRST READING

AN ORDINANCE

TO PROVIDE FOR THE TABLE OF ORGANIZATION, POSITION  
CLASSIFICATION PLAN, COMPENSATION PLAN AND PAY SCHEDULES  
AND RULES AND REGULATIONS PERTAINING TO CONDITIONS OF WORK  
AND SUPPLEMENTAL BENEFITS FOR THE EMPLOYEES OF THE CITY OF  
KETTERING, OHIO, AND TO REPEAL ORDINANCE NO. 4107-08

Mr. Spolrich read the above ordinance in first reading. This ordinance will appear on the December 16, 2008, Council meeting agenda for second reading.

CERTIFICATIONS AND PETITIONS

MANAGER'S REPORT

Mr. Schwieterman, City Manager reported:

Mr. Schwieterman updated Council on upcoming and community events.

- Annual Christmas Gathering at Polen Farm is December 25, 2008 from 1:00 – 4:00 p.m.
- Festival of Lights at Lincoln Park – December 5, 2008 - January 3, 2009 from 5 – 8 p.m.
- Waste Management Holiday Schedule – No collections on Christmas or New Years Day.
- Leaf Pickup is in District 9 today. Will begin District 10 tomorrow. The final round through the City is the week of December 15, 2008.
- Council Meeting – December 16, 2008
- Martin Luther King Breakfast – Monday, January 19, 2009 at 7:30 a.m. at Christ Methodist Church. Tickets are available: \$5.00 for adults and \$2.00 for children.

Mr. Schwieterman urged citizens to attend these events and enjoy our community.

OTHER BUSINESS NOT ON WRITTEN AGENDA

Communications and Reports

Audience Participation (5 Minute Limit Per Speaker)

COUNCIL COMMITTEE REPORTS

Mr. Duke – Thanked Kettering Children’s Choir for attending this evening. They have wonderful voices and did a great job.

Mr. Spolrich – Thanked the Finance Department for a great workshop for budget review. They were very well prepared and the presentation was great. He thanked the City for planning a productive day in a workshop meeting for Strategic Planning on December 2, 2008. He was at the fitness center a couple of days ago and he heard an alarm go off on a Volunteer Firefighter in the middle of his workout. He immediately took off to go take care of our community. He appreciates the commitment of these volunteers. Kettering Firefighters will be wrapping and delivering gifts for their adopted families on December 19, 2008 at Station 33.

Mr. Thompson – No Report.

Mr. Klepacz – Attended the Mayors Christmas Tree Lighting on Friday, December 5, 2008. What a show, the lights were beautiful. He urged residents to stop by and take a look. He wished Sue Fullenkamp a Happy Birthday.

Mr. Wanamaker – Informed everyone the City has lost a good friend. Bob Courtney recently passed away. Bob was a long time volunteer for the City in the Police and other departments. He was well known as a sports official in this area and a wonderful ambassador for the City of Kettering. Condolences go out to his family.

Mayor Patterson – Thanked everyone for a great strategic planning session on December 2, 2008. Kettering/Oakwood/Moraine Chamber recently held their annual breakfast. Congratulations to Ann-Lisa and her staff for a nice event. December 5, 2008 was the Mayor’s Christmas Tree Lighting and kick-off to the light show. He thanked all those that came out and participated. He thanked Krispy Kream and Edible Arrangements for their sponsorship. He thanked the Kettering Children’s Choir for singing at this event.

There being no further business to come before this meeting of the Kettering City Council, Mayor Patterson adjourned the meeting at 8:41 p.m.

ATTEST:

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DONALD E. PATTERSON, MAYOR

Connie S. Gaw  
Clerk of Council