

**KETTERING CITY COUNCIL  
REGULAR MEETING MINUTES**

**July 9, 2013**

The Council of the City of Kettering, Ohio, met in regular session on Tuesday, July 9, 2013, at 7:30 p.m. in Council Chambers at the Kettering Government Center South Building, 3600 Shroyer Road. 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:           Patterson, Duke, Klepacz, Schrimpf, Scott, Wanamaker  
and Webb

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 operator, Daniel Blommel and thanked him for his assistance.

**APPROVAL OF MINUTES**

June 25, 2013 – Council Meeting & Council Workshop Minutes

Mr. Klepacz reported that he reviewed the above minutes and moved the minutes be approved. Mr. Duke seconded the motion and there being seven (7) yea votes, and no (0) nay votes for the June 25, 2013 minutes, the motion was declared carried by roll call vote.

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

**PROCLAMATION** Parks and Recreation Month – July 2013

Mrs. Schrimpf read the above Proclamation and same was accepted by MaryBeth Thaman, Parks, Recreation and Cultural Arts Supervisor.

**PRESENTATION** – Parks, Recreation and Cultural Arts Department

Bill Tschirhart and Stacy Schweikhart, both with the Parks and Recreation Department showed a PowerPoint Presentation to Council about “I Love My Parks & Rec,” and then gave a brief report.

**PUBLIC HEARING**

Public Hearing – Appealing the decision made by the Board of Zoning Appeals approving a request for a height variance with conditions for privacy fencing in the rear yard at 1201 Alta Vista Drive.

Mayor Patterson announced that City Council will conduct a public hearing for the appeal of the June 10, 2013 decision of the Kettering Board of Zoning Appeals in BZA Case No. 4091 approving an application from the owner of 1201 Alta Vista Drive for a two foot variance from the six foot height limitation for privacy fences.

Since City Council is sitting as judge and jury in these appeals and will be deciding the appeals at a future meeting, City Council will not respond to questions or make statements regarding what is presented tonight. Therefore, please do not direct any questions to City Council or expect City Council to comment on the appeals.

A complete written appeal of the decision in BZA Case No. 4091 was filed by Marna Radcliff, 1260 Ashland Avenue, Dayton, Ohio.

This hearing is being recorded, and the recording will contain the official record of all evidence admitted or proffered during the hearing. During the public hearing each appellant who filed a complete written appeal may: Present their position, arguments, and contentions; Offer and examine witnesses and present evidence in support of their position, arguments, and contentions; Cross examine witnesses purporting to refute their position, arguments, and contentions; Offer evidence to refute evidence and testimony offered in opposition to their position, arguments, and contentions; Proffer any such evidence into the record, if the admission of such evidence is denied.

This hearing will proceed in a manner similar to a civil action. Therefore, the order of the hearing will be as follows: First, each appellant will have an opportunity to make an opening statement and so will City staff and the applicant. Next, each appellant will have an opportunity to present their case and so will City Staff and the applicant. Next, each appellant will have an opportunity for rebuttal. Finally, each appellant, City Staff, and the applicant will have an opportunity to make a closing argument. Closing arguments will be followed by a public comment period for those members of the public who wish to speak regarding the appeals. Public comments will be limited to five minutes per person. The public hearing will then be closed.

City Council will decide the appeals at a future City Council meeting. In the interests of time, I ask each person to try and be as brief as possible and not repeat material that has already been covered. City Council reserves the right to continue the public hearing, if necessary, to a future meeting.

He asked that all persons wishing to speak to the City Council tonight regarding the appeals should stand in the place where you are, raise your right hand, and take the oath. The oath was administered. Mayor Patterson opened the Public Hearing.

Mayor Patterson announced appearances will need to be made for the record. He asked that when he called each name, they come forward to the podium and state their name and address and say if they took the oath.

Those that came forward: **Marna Radcliff**, 1260 Ashland Ave. Dayton (took oath); **Ron Hundt**, 3600 Shroyer Road (took oath); **George Frazier**, 1201 Alta Vista Dr. (took oath).

Mayor Patterson announced now it is time for main presentation. In the interest of time, please be as brief as possible but be sure to present any information that you want the City council to consider in your appeal. During your main presentation you may call witnesses or, if you have no witnesses other than yourself, you may come forward and make your presentation. If you have documents that you would like us to consider, you may submit those to us during your presentation or while questioning your witnesses. Witnesses need to sit in the witness box over to the right of the podium. Please speak clearly and into the microphone.

Mayor Patterson asked that city staff come forward to make their main presentation.

**Ron Hundt**, City Staff came forward to give his presentation. He stated he has no witnesses. He is the City Staff Liaison for the Board of Zoning Appeals and presented this case to the BZA on June 10, 2013. The exhibits he is showing are already part of the BZA record for the case originally requested by Mr. George Frazer, 1201 Alta Vista. The property is bounded on the north by properties that are mostly in Dayton but there is a small portion of land at the rear owned by the appellant and a neighbor who is not part of this appeal. He showed an aerial site plan and explained where the 8-foot fence will abut the appellant's property on Ashland. There were no objections to the height of the fence but the BZA did not include a condition to remove the existing chain link fence as part of the privacy fence installation. He showed photographs of the area in concern. There is 4-6 inches between the privacy fence posts and the existing chain link fence. Five conditions were approved by the BZA on June 10<sup>th</sup> with one of those addressing the requirement of trimming between the two fences. The appellant Mr. Radcliff provided an exhibit to him this evening of his surveyed property. The City does not prohibit having two fences next to each other and staff has no preference about this issue.

Mayor Patterson asked if the appellant or applicant had any questions for Mr. Hundt. The appellant **Mrs. Radcliff** had none. The applicant **Mr. Frazer** stated that he did not know it was about the two fences side by side but thought it was the height. He went around his neighborhood and saw dozens of fences side by side and he showed photos of those fences. The City does not prohibit having two fences. Both fences will totally be on his property with no encroachments onto his neighbor's property.

Mr. Hundt then gave Mr. Hamer, City Law Director the presented exhibits to be marked as part of the official record.

**Marna Radcliff, Appellant** came forward to give her presentation. She indicated that she does have one witness present to speak this evening. She is here because of the wood fence to be placed behind the chain link fence. If you are sitting on her deck it will be an eyesore. Originally they had a fence up on their property line and Mr. Frazier removed that fence and put up the current chain link fence. They have no problem with a chain link fence but would like Mr. Frazier to put it behind his wood fence. All they will see from their property is a wood background with weeds growing between the two fences. They do not want to have to look at both fences. It hurts their property value.

Mayor Patterson asked if City staff or the applicant had any questions for Mrs. Radcliff. City Staff, **Mr. Hundt** had none. The **applicant Mr. Frazier** stated that the Radcliff's currently have privacy fences running down both sides of their property turned the wrong way, creating a nuisance for both parties on either side. Mr. Hamer asked Mr. Frazier what is the question? Mr. Frazier said the question was why the appellants are trying to hold him to a much greater standard than what they are holding themselves too? Mrs. Radcliff replied that someone installed both of those fences before they even purchased their home. They were installed by Dayton's rules and not Kettering's rules. Besides, this has nothing to do with why they are here tonight.

The witness **Mr. Radcliff** came forth to give his statement. He is here because he would like Mr. Frazier to install either the chain link or the privacy fence, not both. He does not mind if Mr. Frazier would move the chain link behind the privacy fence so that they do not have to look at both fences. There is almost a foot between both fences and clean up will be at his discretion. This will create a terrible eyesore on their property. This all started when Mr. Frazier told them the property line ran 3 feet into what he thought was his yard. He paid to have his property surveyed and found out that Mr. Frazier lied. Their fence had already been taken down and his fence put up, which is the existing chain link. He showed Council photographs of the existing chain link fence and installed wood posts. Weeds are already growing between the two fences. It will look good from his side but will be terrible from ours. The 8 foot fence between them is ok because hopefully it will be tall enough to screen the light's from the rear of Mr. Frazier's yard that shines straight into their bedroom at night.

Mayor Patterson asked **Mr. Hundt** if he had any questions and he had none. **Mrs. Radcliff** and **Mr. Frazier** both had no questions of the witness. Mr. Radcliff gave his exhibits to Mr. Hamer to be included as part of the official record.

**George Frazier, Applicant** came forward to give his presentation. He asked to use Mr. Radcliff's Exhibit #1 photo as part of his presentation. The whole thing began around one year ago when he stopped access to his yard by Mr. Radcliff. Both the current and the privacy fence are totally located on his property. He keeps hearing from the appellant that he took out their fence. The fence he removed had the fabric to their side and the posts to his and was originally put up by the previous property owner. That was his fence so he removed it. When he started putting in the current chain link fence Mr. Radcliff asked if he was going to put the gate between properties back in. He told him no and that is what started this whole thing. He showed a photo of his backyard lights. His bushes are 10 feet tall and he has been letting them grow to shield his lights and those coming from the Radcliff's property. His lights are motion censored and not on all the time. Every time he goes out into his rear yard at night the Radcliff's turn on their lights so that he cannot enjoy sitting out in the evening. That is also what started this and he and Mr. Radcliff have had several disputes over these lights. His lights are shielded and compliant with City code. Mr. Radcliff's lights are not. Mr. Radcliff kept saying it was his fence so he had a survey done and the fence removed was on his property. He showed photos and explained where the property pins are located. There has never been any encroachment onto the Radcliff's property. The reason he wants to keep the wire fence is because the Radcliff's have a dog and the other neighbor has two pit bulls. The privacy fence is just to keep out the light. He has had to call the police on Mr. Radcliff for blowing trash onto his property. He showed a photograph of the property line where Mr. Radcliff went wild with the poison spray between the two fences. The poison has leached out so far he has had to put mulch over it at least one foot and it is still leaching out. The privacy fence he plans to put up will have the smooth side on the Radcliff's side, sealed and stained and will look good. He showed photographs of numerous fences throughout Kettering that are side by side. They are very common here in Kettering. The weeds are definitely being maintained. The photo shown by Mr. Radcliff was not weeds but day lilies and they have been removed now and covered with mulch. Again, neither of these fences is on the Radcliff's property.

Mayor Patterson asked if City staff or the appellant had any questions for Mr. Frazier. City Staff, **Mr. Hundt** had none. The **appellant Mrs. Radcliff** stated what is she to do about a privacy fence that was put in by the previous owner in 1984 and her lights were inspected by the City of Dayton and are compliant to code. She wants to know what is his beef? Mr. Frazier replied that the lights are shining directly into his kitchen. Mrs. Radcliff asked how did he know the previous fence his because she has a statement from the lady who owned their house that the fence was in their yard. Mr. Frazier replied that when he bought his home, the owner said that his father put in the fence in 1958. The fence is was and is 100% on his property line. Mrs. Radcliff replied that he is not correct.

Mr. Hamer asked that Mrs. Radcliff please ask questions, she cannot keep contradicting the witness.

Mrs. Radcliff asked what type of trash was her husband blowing into his yard. Mr. Frazier replied yard debris and leaves. Mrs. Radcliff replied that it was Mr. Frazier's leaves they were blowing back into his yard because they have no trees. Mr. Frazier replied that is a lie.

Mayor Patterson stopped the appellant and applicant from arguing.

Mrs. Radcliff asked if Mr. Frazier if he ever wanted to get along with his neighbors? Mr. Frazier had no comment.

Mr. Frazier then gave his exhibits to Mr. Hamer to be part of the official record.

Mayor Patterson stated it was now time for the party who filed the written appeal to offer new evidence that they have not already presented in opposition to what the City Staff or the owner-applicant just presented. However you are not required to do so.

**Mrs. Radcliff** had nothing further to add but referred her rebuttal to Mr. Radcliff. **Mr. Radcliff** showed a photograph showing a ruler measuring between the two fences. He showed a copy of the survey of his property that he had done right after he bought his home. Mr. Frazier thinks the problem is over the property line but that is not the issue. It was when he said his property line ran three feet onto their property. That was why he paid to have his property surveyed. He showed Exhibit Radcliff #1 again and stated as you can see Mr. Frazier's lights are very illuminating even in the daylight and even worse at night. Also, if you look closely at the top rail of the chain link fence it is green. He said that the fence was his, but the top rail is not his fence. The reason he moved the fence is because he wanted a uniform fence to line up with the other neighbors property/yard. By the time he had the survey back from the County Mr. Frazier had already taken his chain link fence down and reused the green top rail on his newly installed fence. There is no question with property line. But that the chain link fence that is currently there should be removed. That way both property owners can maintain their own yard. Mr. Frazier said the fence was his but the original owner of their house sent them an email saying it was their fence and it was installed in 1994 and they painted it green. He showed the email on the overhead projector. He had the City of Dayton come out and their lights were found to be in compliance with the City codes. They also has motion-censored lights. He showed Council on the overhead projector a photo of their 12-year-old dog, which he thought Mr. Frazier claimed to be afraid of. He presented the additional evidence to Mr. Hamer for the official record.

Mr. Webb asked for clarification from Mr. Hamer. His understanding is they should be talking about fences and he wanted to be clear in that fences and lights that are in the City of Dayton regardless of their code the City of Kettering has nothing to say about them. These issues between the two parties have nothing to do with what we are doing here today. So allegations of one side or the other he doesn't understand why they are taking about those and should they be?

Mr. Hamer responded that Mr. Webb is correct that the City of Kettering does not control fences or lighting in the City of Dayton. However in these types of administrative appeals the evidence rules are relaxed and appellants are allowed to take advantage of that to a certain extent. It is up to City of Kettering Council to determine what weight if any to any of evidence, exhibits or testimony that was presented here this evening.

Mayor Patterson expressed we are holding this hearing so that the appellant and applicant can state their case, which we do not filter. Whatever they present whether it's relevant to the appeal or not we will take the information into consideration. The fact that they talked about eight different things tonight really doesn't come into play for Council consideration.

Mr. Hamer responded that ultimately it is up to Council to determine what was presented, was it relevant or not to the issue of the appeal and which can be discussed during the determination process.

**Mrs. Radcliff** made her closing remark that of all the evidence that was heard this evening they just want the chain link fence to be removed and the privacy fence to be put where the chain link fence currently is. The rest of the comments can be forgotten. She thanked Council.

**Mr. Frazier** expressed that he also has closing remarks. At the BZA hearing it was if determined that he could put an 8-foot privacy fence on his property. It had nothing to do with the chain link fence. When he looks around Kettering the evidence that he presented was that two fences together are common throughout both Kettering and Dayton. He feels he has gone above and beyond what he sees other property owners doing. The good side of the fence is going toward the Radcliff's side. He plans to keep between the fences clean. He wants the chain link fence up because wood privacy fences only have a life expectancy of 5-10 years and he expects to have a row of bushes tall enough along the fencerow that will be satisfactory and will provide privacy. The privacy fence will then be sliced off to the ground. But for the current time he needs a cure for the situation at hand. The chain link fence is already there to maintain animals so he sees no reason to remove it. He thinks precedence is already set throughout Kettering and he believes the approval should remain as it is. There is no law or regulations against two fences. Both fences are on his property. He also has another fence on his property that is painted green but that may just be a coincidence. What he is doing is lawful and he is trying to appease the harassment with the light trespass. It will be good for both of them. He thanked Council.

Mayor Patterson stated it is now time for the public comment period from those members of the public who wish to speak regarding the appeals. He asked that they not ask any questions of City Council or expect City Council to comment on the appeals. Public comments will be limited to five minutes per person. Each person may only speak once. None were heard

Mayor Patterson asked for a motion to close the public hearing. Mrs. Schrimpf made a motion to close the public hearing. Mr. Klepacz seconded this motion. Motion carried by unanimous vote.

Mayor Patterson announced the public hearing is now closed, and no further evidence will be submitted to City Council for these appeals. City Council will make a decision on the appeals at a future meeting.

ORDINANCES IN SECOND READING

RESOLUTIONS

A RESOLUTION  
NO: 9337-13  
BY: MRS. SCHRIMPF AND MR. KLEPACZ

AUTHORIZING THE CITY MANAGER TO ACCEPT A GRANT FROM THE OHIO DEPARTMENT OF PUBLIC SAFETY

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

The following votes were recorded: Mr. Duke, Yea; Mr. Klepacz, Yea; Mrs. Schrimpf, Yea; Mr. Wanamaker, Yea; Mr. Scott; Yea; Mr. Webb, 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.

A RESOLUTION  
NO: 9338-13  
BY: MR. KLEPACZ AND MR. DUKE

AUTHORIZING THE CITY MANAGER TO USE COMPETITIVE BARGAINING AND NEGOTIATED QUOTES TO CONTRACT FOR LIFE FITNESS EQUIPMENT FOR

THE KETTERING RECREATION COMPLEX AND THE KETTERING FITNESS AND WELLNESS CENTER

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

The following votes were recorded: Mr. Webb, Yea; Mr. Scott, Yea; Mr. Wanamaker, Yea; Mrs. Schrimpf, Yea; Mr. Klepacz, Yea; Mr. Duke, 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.

A RESOLUTION  
NO: 9339-13  
BY: MR. DUKE AND MR. WEBB

AUTHORIZING THE CITY MANAGER TO ACCEPT A \$5,000.00 GRANT FROM THE KETTERING PARKS FOUNDATION

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

The following votes were recorded: Mr. Duke, Yea; Mr. Klepacz, Yea; Mrs. Schrimpf, Yea; Mr. Wanamaker, Yea; Mr. Scott; Yea; Mr. Webb, 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.

A RESOLUTION  
NO: 9340-13  
BY: MR. WEBB AND MR. SCOTT

AMENDING THE COMMUNITY DEVELOPMENT BLOCK GRANT ("CDBG") PROGRAM FOR FISCAL YEAR 2013 ("FY2013") AND AUTHORIZING THE CITY MANAGER TO ACCEPT 2013 CDBG ENTITLEMENT FUNDS FROM THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Mr. Webb read the above resolution and moved for approval. Mr. Scott seconded the motion.

The following votes were recorded: Mr. Webb, Yea; Mr. Scott, Yea; Mr. Wanamaker, Yea; Mrs. Schrimpf, Yea; Mr. Klepacz, Yea; Mr. Duke, 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.

A RESOLUTION  
NO: 9341-13  
BY: MR. SCOTT AND MR. WANAMAKER

TO MAKE SUPPLEMENTAL APPROPRIATIONS FOR CURRENT EXPENSES AND OTHER EXPENDITURES OF THE CITY OF KETTERING, STATE OF OHIO, DURNING THE FISCAL YEAR ENDING DECEMBR 31, 2013

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

Mr. Schwieterman explained this supplemental appropriation is for the acceptance of grant monies.

The following votes were recorded: Mr. Duke, Yea; Mr. Klepacz, Yea; Mrs. Schrimpf, Yea; Mr. Wanamaker, Yea; Mr. Scott; Yea; Mr. Webb, 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 AMEND THE TRAFFIC CONTROL MAP AND THE TRAFFIC CONTROL FILE OF THE CITY OF KETTERING, OHIO TO SHOW THE INSTALLATION OF TRAFFIC SIGNS IN THE CITY OF KETTERING, OHIO

- A. STOP ON WILES DRIVE AT ITS INTERSECTION WITH WEST AVENUE AND PEACH ORCHARD ROAD; AND
- B. STOP ON PEACH ORCHARD ROAD AT ITS INTERSECTION WITH WEST AVENUE AND WILES DRIVE; AND
- C. ROW ON WEST AVENUE AT ITS INTERSECTION WITH WILES DRIVE AND PEACH ORCHARD ROAD

Mr. Wanamaker read the above ordinance in first reading. The second and final reading will be held at the July 23, 2013 Council meeting.

CERTIFICATIONS AND PETITIONS

MANAGER'S REPORT

Mr. Schwieterman updated Council on upcoming and community events.

- Effective July 1, 2013 Waste Management will no longer require yard debris bags. Debris can be put into regular trash bags and set on at the curb during normal trash day.
- KetterGreen Recycling Events – Household Hazardous Waste Drop-off, July 20, 2013 from 9 –noon at the Montgomery County Waste Center; and Shredding Day, August 27, 2013 from 9-noon in the Government Center Parking Lot.
- Kickin Chicken Wing Fest – July 13, 2013 at Lincoln Park Civic Commons
- Summertime Sousa & Sundaes Kettering Civic Band Concerts – July 18 and August 15, 7:00 p.m. at Polen Farm
- Frazee Pavilion shows update.
- Spaulding Road Construction Update – Spaulding Road will be closed beginning July 22, 2013 for 3 weeks.

OTHER BUSINESS NOT ON WRITTEN AGENDA

Communications and Reports

Audience Participation (5 Minute Limit Per Speaker)

Representative Jim Butler, 1401 Devereux Dr. – He gave Council a legislative update as to what is happening at the Ohio House of Representatives.

Mayor Patterson thanked him for coming to the meeting this evening.

COUNCIL COMMITTEE REPORTS

Mrs. Schrimpf reported:

- Congratulated the Parks Department for a great Go4th! Event.
- Orange Leaf Yogurt at Town & Country Shopping Center will have a fundraiser to benefit the Kettering Rotary Club on June 10, 6-9 pm.

Mr. Klepacz reported:

- Update – Summer Lunch Program at Trails of Oak Creek.
- Reminded citizens to support local Kettering businesses.

Mr. Duke reported:

- Congratulated Mr. Klepacz for the success of the Lunch Program at Oak Creek.
- He attended the Go4th! Event.
- On July 18, 2013 the City will welcome students from Steyr Austria.
- Final week to get in Kettering Leadership Applications.

Mr. Webb reported:

- He is grateful he has great neighbors.
- Thanked Representative Butler for his update.

Mr. Scott reported:

- Excellent Go4th! Event this year.
- Thanked Representative Butler for coming this evening.
- Congratulated Councilmember Webb on his retirement from the Ohio National Guard.

Mr. Wanamaker reported:

- Congratulated Mayor Patterson for winning the Over 50 Golf Championship at NCR Country Club.

Mayor Patterson reported:

- On June 22, 2013 he welcomed the crowd at the Herman Hermit's Concert at the Frazee.
- Read a Proclamation on June 25, 2013 for Father Haemmerle who retired from St. Charles Church.
- Had a great time at the Go4th! Event.
- Attended the Trails of Oak Creek Summer Lunch Program last Friday.
- Attended the Police Promotion Ceremony June 9, 2013

They're being no further business to come before this meeting of the Kettering City Council; Mayor Patterson adjourned the meeting at 9:36 p.m.

ATTEST:

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DONALD E. PATTERSON, MAYOR

Connie S. Gaw  
Clerk of Council