

**CITY OF FORT MITCHELL, KY  
CITY COUNCIL MEETING  
November 16, 2009**

**CALL TO ORDER / PLEDGE OF ALLEGIANCE / ROLL CALL**

Mayor Holocher called the meeting to order at 7:00 p.m. and led the Pledge of Allegiance.

**PRESENT:** Vicki Boerger, Mary Burns, Bill Reis, Will Terwort, Christopher Wiest and Dennis Zahler **ABSENT:** David Schrand and David Stoeckle **Others Present:** Mayor Thomas Holocher, Police Chief/CAO Steve Hensley (arrived at 7:14), City Attorney Robert Ziegler, Public Works Director Robert Zerhusen, Capt. Bussman, and City Clerk Amy Able.

**APPROVAL OF AGENDA AND MINUTES**

**Mr. Zahler made a motion to approve the agenda**, a second was offered by Mrs. Boerger. Motion carried by voice vote. **Mr. Reis made a motion to approve the minutes** of the November 2, 2009 meeting, a second was offered by Mr. Zahler. The motion carried by voice vote.

**CITIZENS NOT ON THE AGENDA**

**Paul Meier, Mayor of Crestview Hills**, addressed Council in response to news articles about the request from Beechwood School for a text amendment that would allow billboards on school property adjacent to I-75. He noted local city leaders spent many hours coming up with the current language in the new sign ordinance. He expressed concern for allowing electronic billboards such as those in Covington which cause a driver's eyes to leave the road. He said the proposed location is known for traffic problems and new distractions would increase accidents. Requests for more billboards from other non-profits (including churches, cemeteries, governments) along the highway are sure to follow. The State does not allow billboards within six hundred feet of the interstate. Billboard companies will continue to push the envelope. Crescent Springs and other cities have been challenged on the issue in court and won. If approved billboard companies will try to migrate through Northern Kentucky. He noted there could be considerable costs when cities are challenged on future denials. He asked that Council not allow billboards. Mayor Holocher noted this matter will be discussed further under the City Attorney's report.

**MAYOR'S REPORT**

Mayor Holocher recognized **Mr. Mike Schwartz of the Northern KY Area Planning Commission** and asked for him to explain NKAPC's recommendation on a request for a **text amendment concerning parking**.

\*Chief Hensley arrived at 7:14 p.m.

Mr. Schwartz explained there are two parts to the text amendment. Current regulations provide for shared parking under which two separate land uses can use the same parking area in off peak times. An example is residential and office space using the same parking at different times. The City submitted an application for (a text amendment to allow) **cooperative parking** which is typical in a shopping center which has one or two anchor tenants drawing in traffic thus allowing the smaller stores to pick up customers. Trip generation of the facility is reduced. With three or more uses at one shopping center, parking can be reduced by fifteen percent. With four or more uses, parking can be reduced by twenty percent. The NKAPC staff recommendation is for approval of the text amendment. The Kenton County Planning Commission held a public hearing and recommended approval of the change. Cooperative parking is already utilized in Covington. It will reduce pervious surfaces and thereby reduce storm water runoff. Mayor Holocher noted the original 5.5 spaces per 1,000 square feet of gross leasable floor area was the highest requirement in our area. Mr. Schwartz explained the second part of the text amendment request was to **reduce the requirement from five and a half to four spaces**. An NKAPC study done several years ago found 5.5 spaces to be a very high requirement when compared to national standards. Chief Hensley confirmed the request for the text amendment followed a meeting with the owners of Expressway Plaza

and representatives from Kroger and they believe this will meet their needs. Mr. Wiest expressed interest in moving forward. An ordinance will be prepared.

Mayor Holocher noted the annual **Tree Lighting** will be on December 1 at 7:00 p.m. and **Luminary Night** will be December 13 from 6:00 -8:00 p.m. Residents may order luminary kits through December 2 at the City Building.

#### **CITY ATTORNEY'S REPORT**

Mr. Ziegler read **Municipal Order 2009-11** appointing Heather Ratliff to the Park Board. Mayor Holocher stated Ms. Ratliff has children and has been active in the community in other ways. She will replace Lee Anne Hollenkamp who served on the board for many years. **Mr. Reis made a motion to approve Municipal Order 2009-11, second to the motion was offered by Mr. Terwort.** Mrs. Boerger expressed thanks to Ms. Ratliff for her being willing to serve and to Ms. Hollenkamp for her long service. Hearing that there was no further discussion the Mayor called for a vote. **The motion carried by voice vote.**

Mr. Ziegler stated a draft of proposed language for a **text amendment as requested by Beechwood School** has been sent to Council. This includes an exemption to the existing ordinance which prevents billboards. The exemption would be for any department, commission, board authority, agency or instrumentality of a state government that abuts an interstate highway in an R1F Zone. Regarding illuminated signs, there were discussions with the attorney for the school board and this could be addressed later since electronic signs are not being requested at this time and since lighted signs are not permitted under the current ordinance. In the draft (Section 6) a new class for signs (Class 14) is created. Mr. Ziegler noted the proposed figures on the draft were added by Beechwood's attorney. These figures include: a minimum size of 936 square feet, a fifty-five foot maximum height above grade at the top of the sign for a pole sign, the quantity of two Class 14 signs allowable on a site under single ownership, the distance of not further than 300 feet from the interstate right-of-way, and not closer than 200 feet from a residential structure.

**Mrs. Diane Becker of Floral Avenue** urged Council not to approve any measure to allow billboards. She spoke against this at the school board meeting. The proposed sizes are comparable to the property frontage on a residential lot. Beechwood did not adopt the allowable tax rate which would have allowed more revenue. Fort Mitchell and other cities have fought and invested considerable time to keep billboards from cluttering the area and there are none along the interstate between Covington and Florence.

**Mr. Joe Oka of Ross Avenue** asked the life span of billboards and if they would be posted indefinitely and if there are provisions for tax reductions. Mr. Oka asked if someone owning property in an R1F Zone could sell their home for advertising space. Mr. Ziegler explained the proposed language is restrictive so that a school board (or commission, etc.) would have to own the property. Mr. Oka asked if other companies could petition for an exemption and sue if denied. Mr. Ziegler responded that such private companies would not qualify. Mr. Oka asked who would control the content and if those denied advertising space on the billboards could sue. Mr. Ziegler answered that the city would not be able to regulate the content; this is covered under the contract between the school board and the sign company.

**Mr. Joe Creaghead of Maple Avenue** said lighting should be addressed upfront and all specifics should be clearly presented to citizens. Though he is a supporter of Beechwood he has concerns and feels it should be more well-defined so that residents can make informed decisions about it. If an electronic billboard is placed on a fifty-five foot pole he believes residents of Old Fort Mitchell will see it at night. At this point he said he protests the idea and urges Council to get questions answered for their decision and for the citizens. Ms. Burns noted concerns about lights affecting residents of Maple Avenue were brought up at the last

meeting. Mr. Ziegler explained electronic (LED) signs are not being requested at this time. That language was put in initially to address lighting but it has been suggested this be removed for the time being because they are currently hoping to install a traditional billboard and Council is not looking at regulating LED signs.

**Mrs. Ann Reis of Highland Avenue** said high standards such as not allowing obnoxious signs make the city lovely. She added billboards can destroy the beauty of an area.

**Mr. Paul Meier of Crestview Hills** added electronic billboards were not permitted at the locations in Covington but a company installed that type (anyway) over a weekend. A lawsuit followed and is pending but the signs remain. Fighting such cases is a considerable cost to cities (and citizens.)

**Mr. Tom McGovern of Oxford Drive** stated when he served on the school board there was a community relations committee and what must be considered is if this is something that will truly benefit the city as a whole.

**Mr. Jeff Cory of Ross Avenue** stated he moved to Fort Mitchell so his children could attend Beechwood. He said he is unsure if billboards are good for the school and the city but he does not mind them. He said if it bothers people across the street there is a problem. He hopes the City will work with Beechwood to help the school get what they need. He is in favor of getting the school what they need even if it means more taxes. Mayor Holocher explained Beechwood is its own taxing entity and the City does not fund the school.

Mayor Holocher read from **several letters received on the subject.**

**Mr. Paul Miller** of Burdsall respectfully requested that the request be denied. It would be an imposition to residents who will look at it daily and it may bring unwanted negative notoriety to the City.

**Mr. Rick Wessels** said billboards would be a permanent scar at the exit and would not be good for the City or Northern Kentucky.

A letter was also received from Mrs. Becker who spoke this evening.

**Mr. Bill Goetz** of Woodlawn Avenue noted local cities have long opposed billboards and that is why there are none between Covington and Florence.

Mr. Mike Dammert of Watch Hill Road and Chair of the Beechwood School Board said this is not something the School Board is trying to do to residents but rather for the residents. They began looking at the idea years ago as an option when needed. Fiscally the school is doing well and currently has a high carry forward but the State threatens to take the overage back. Funds to build with have to be borrowed and come from bonds; funds to run the school are in the general fund. If three million dollars is made over twenty years that is less money required from tax payers. This year the school did not take the allowable tax rate that would result in a four percent increase to revenue. Beechwood consistently delivers an excellent product and this is part of long term planning. Discussions on this matter started with the city long ago. None of those present except Mr. Creaghead will see the billboards except when on the highway. Mr. Dammert added Maple Avenue was examined (as a vantage point) when choosing the location. He said the billboards will not be fifty-five feet high. The school board is following the suggestion that all the facts be gathered for vetting at NKAPC. He refuted the insinuation that the decision was based on taking the most money available noting the Llar company made a higher offer but the school board had more trust in Norton. The Board requested that the text amendment be narrowly scripted and they will be cautious about placement so residents will not see it from their homes. The school board will agree ahead of time to only two signs. This will be an improvement because currently the area is over grown and not maintained but the sign company will keep the area clean and maintained. He stated the school board wants to raise three million dollars and not raise taxes and they will provide tax relief as long as sign is there. (The

contract is for four periods of five years each.) Mr. Dammert said the State has pushed to strengthen county schools and wants Beechwood to be a kindergarten through eighth grade school. He said they are asking for the opportunity for NKAPC to vet this so everyone can review the facts and then a decision can be made.

Mr. Reis stated he received several calls on the issue and asked if the Board has received negative feedback. Mr. Dammert replied he heard from four to six residents. Mr. Cory asked if the State tries to take back unspent tax dollars could they take this money. Mr. Dammert clarified the State tries to take back any overage.

Mr. Wiest said the opinions he has heard vary from absolute opposition to acceptance to positive comments on a unique approach. Mrs. Boerger stated that quite a few people expressed great concern to her. She provided to Council copies of minutes from February 10, 1922 in which advertising was forbidden and added if the City forefathers had this foresight we must give much thought and consideration to any change.

Mr. Tom Norton of Norton Advertising offered to answer any questions. He said he cannot be required to display content he doesn't believe is in the community's best interest and they will not run any embarrassing ads. New LED fixtures will reduce ambient light by fifty percent from traditional billboards. Mr. Terwort asked about the signage at a school in Newport referenced in the last meeting and the setback requirements through any applicable state and federal laws. Mr. Norton replied that was cited as an example of a public and private partnership. He explained the Highway Beautification Act gives the state regulatory control within 660' back from the expressway so any signs built must comply with federal law as regulated by the state. This is why an application for a permit must be made with the Kentucky Department of Transportation. The City of Newport's zoning permitted billboard use in that district. Mr. Wiest asked if the City does not approve a text amendment, does the school board or Norton intend to bring litigation to force the Transportation Cabinet to process the application since the school board is its own zoning authority.

\*Mayor Holocher stepped out at 8:50 p.m.

Chief Hensley noted the State would not review the request since the City does not currently allow billboards. It is possible the State would deny the request even if the City approved it. He relayed a question from a resident about casino advertisements. Mr. Norton replied his contract with the school board disallows advertisement of anything not legal for children so advertisements for gambling (alcohol, tobacco, etc.) would not be allowed.

\*Mayor Holocher returned at 8:53 p.m.

Mr. Reis said Council needs more time to consider the matter. Mrs. Boerger and Ms. Burns voiced agreement. Mr. Zahler asked that Council be provided more information including heights and other details. Mr. Terwort stated he wanted legal guidance and information on how other jurisdictions have handled static versus electronic signs including any pending litigation and a review of case law. Mr. Reis said it is important to consider that local cities have opposed billboards. Chief Hensley stated that Mr. Vergamini of Crescent Springs' Council encouraged Fort Mitchell not to allow billboards and had even been involved in litigation as was Fort Wright. Mr. Schwartz noted Erlanger and Crescent Springs had also been involved in the suit. Mr. Ziegler noted that was before the new ordinance that most all local cities adopted. Mr. Schwartz explained a company applied for permits in numerous locations. Permits were denied by NKAPC (and Erlanger's zoning administration.) Patent litigation in Federal Court followed. Ultimately the cities won the case based on the size, height and location were larger, taller and not in the location of any other allowable signs in those cities. Mr. Wiest expressed his concern about an equal protection challenge

if the school district is treated differently than other property owners. Mr. Ziegler stated that can be explored further.

**CITY ADMINISTRATOR'S REPORT**

Chief/CAO Hensley had nothing to report.

**COMMENTS FROM COUNCIL**

Mr. Reis asked if there were any changes to the contract for the Civil War reenactment for the Centennial. Mrs. Boerger replied that the revised copy distributed to Council at the last meeting is accurate. It will be held on both days and the Taste of Fort Mitchell event is being planned for two days. There will be a special "Fort Mitchell Night" at the Cincinnati Observatory and there may be a special presentation or display by the observatory on Saturday evening during the Taste of Fort Mitchell.

**ADJOURNMENT**

There being no further business on the agenda, **Mr. Zahler made a motion to adjourn the meeting and Mrs. Boerger offered a second to the motion.** Motion carried by voice vote, **the meeting adjourned at 9:15 p.m.**

Respectfully submitted by:

Signed \_\_\_\_\_, 2009

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Amy B. Able, City Clerk

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Thomas E. Holocher, Mayor