

BEACHWOOD CITY COUNCIL MINUTES OF THE REGULAR COUNCIL MEETING HELD AT BEACHWOOD CITY HALL, COUNCIL CHAMBERS, 25325 FAIRMOUNT BOULEVARD, ON TUESDAY, JANUARY 19, 2016 AT 7:00 P.M.

The meeting was called to order at 7:00 P.M. by Council President Pro Tem Melvin M. Jacobs

Mr. Jacobs stated that Mr. Horwitz is out-of-town and he will be the City Council President for the next two years.

ROLL CALL: Present: J. Berns, A. Isaacson, M.M. Jacobs,
B.B. Janovitz, B. H. Linick, J. Pasch
Absent: M.S. Horwitz
Also Present: Mayor Gorden, B. A. Reali, W. Griswold, D.A. Pfaff,
P.J. Kearns, K. Winebrenner, D.H. Pekarek,
K.A. Carmen, J. Douitt, T. Turick

Mr. Jacobs welcomed Mr. Michael Zawatsky, Vice-President of the Beachwood Board of Education.

Mr. Jacobs welcomed the Honorable Judge Francine B. Goldberg.

The Honorable Judge Francine B. Goldberg stated that she grew up in Beachwood and it is an honor and privilege to come from University Heights to Beachwood where it is always sunny and 70 degrees. Judge Goldberg stated that she prepared some remarks for when she speaks to Mr. Berns. Judge Goldberg stated that Oprah Winfrey said “your calling is not something someone can tell you about it is what you feel, it is a part of your life force, it is the thing that gives you juice, the thing that you are supposed to do and nobody can tell you what that is, you know it inside yourself”. Judge Goldberg stated that Justin Berns’ calling, his juice, was always public service. Mr. Berns attended Beachwood City Council meetings when he was 23 years old on a regular basis. Judge Goldberg stated that Mr. Berns told him that Councilman Bob Bloom asked him at the time, don’t you have anything better to do, like going to a movie or a baseball game.

Judge Goldberg stated that Mr. Berns has served as a member of the City’s Planning and Zoning Commission, various other City Commissions, and 12 years as a volunteer firefighter with the dream of becoming a councilman, to make a difference, Mr. Berns did not want to be a spectator, he wanted a seat on Council.

Judge Goldberg stated every tried, every failed, no matter, try again, fail again, fail better. Judge Goldberg stated that the words of the great writer and poet Samuel Beckett and words she has also lived by when she ran for a judicial seat, lost and ran again. Judge Goldberg stated that she knows that Councilman Berns also has learned to live by these words, he did not give up, he did not give in, he pressed on and the third time was a charm. Judge Goldberg stated that three Council races, street by street, knocking on every door and the words I can’t, no, or impossible are not in his vocabulary.

CM 2016-19

Judge Goldberg stated passion, persistence, strength, dogged determination are words that Mr. Berns lives by. Judge Goldberg stated that there is no success without failure, Tavis Smiley, a PBS host, author and philanthropist calls them success scars and that you learn more from your disappointments than your successes. Judge Goldberg recalled Michael Jordan's Nike commercial where he stated that he has missed more than 9,000 shots in his career, lost more than 300 games, 26 times he was trusted to take the game winning shot and missed and he failed over and over again in his life and that is why he succeeds.

Judge Goldberg stated that when you think about that Beckett was right, life is ultimately about failing better and every day that you wake up you get another chance to get it right, to fail better.

Judge Goldberg stated that one does not get to elected office without a group effort, a family effort. Mr. Berns has a strong sense of family and is a second generation Beachwood family. Mr. Berns learned about work ethic, integrity, and public service from his parents, and his three older siblings. This Council seat was also earned by his cheerleader, his wife Lisa, and their three beautiful children; Caleb 11 years old; and twins Allie and Sara. Judge Goldberg stated that all of the Berns children have learned the true meaning of persistence and sacrifice and that anything is possible and that their father became a councilman by hard work and determination. Judge Goldberg stated that she asked Mr. Berns to bring her his shoes so that she could show you all the shoe leather that is gone from the bottom of his shoes.

Judge Goldberg quoted a Greek Proverb, "the civilization flourishes when people plant trees under whose shade they will never sit". Councilman Berns is planting those trees now and that his priorities for this great City are economic development - maintaining and attracting businesses and working closely with the School District in order to ensure the high educational standard for Beachwood students, especially his own three beautiful children. Judge Goldberg stated that she knows Mr. Berns will take his talents as President of Berns Custom Homes working with general contractors and homeowners and take those same business skills to Council Chambers. Mr. Berns will have the ability to get things done, compromise and communicate with his fellow Council members and the residents for the best interests of the City.

Judge Goldberg stated that Author William Arthur Ward said that greatness is not found in possessions, power, position or prestige it is discovered in goodness, humility, service and character.

Judge Goldberg stated that she knows Councilman Berns will strive to be the kind of Councilman that exemplifies qualities of resilience, awe, connection, compromise, gratitude and possibility for the entire Beachwood community.

Administration of Oath of Office by the Honorable Francine B. Goldberg to Council Member Justin Berns.

MOTION ADOPTED

CM 2016-21

MAYOR'S REPORT

Mr. Jacobs welcomed the Berns family this evening.

Mayor Gorden welcomed Mr. and Mrs. Sheldon Berns and their family to City Council. Mayor Gorden stated that Mr. Sheldon Berns has sat in many meetings over the years including the time when he served as a councilman.

Mayor Gorden stated to Mr. Berns that he is a lucky individual and he was able to see what transpired during the campaign and Mr. Berns' dedication and the dedication of the individuals in the audience this evening. Mayor Gorden stated that these people are your true friends and they went and did more than any individual or group of people that he has ever seen to support a candidate. Mayor Gorden stated that they were out working and very active and they are really part of your team and they also deserve recognition. Mayor Gorden stated that it was also nice to see Mr. Berns wife and all of his children here this evening.

Mayor Gorden stated that there will be some additional construction along I-271 on the west side, the Beachwood side, heading south. Mayor Gorden stated that there are going to be additional sound barriers walls that are going to be constructed to match the walls that are currently in place. Mayor Gorden stated that the new stretch will go from South Woodland to Shaker Boulevard and that will complete that section that was not done in earlier years when the sound barrier walls were first installed. Mayor Gorden stated that there is no expense to the City and the project has been taken on by O.D.O.T. at an expense of almost \$900,000.00.

COUNCILMEMBER REPORTS (NON-AGENDA ITEMS)

Mr. Berns thanked everyone who is in attendance this evening who helped him on his campaign. Mr. Berns stated that most importantly he would like to thank his wife and kids. Mr. Berns stated that he was unable to attend the first Council meeting of the year because he and wife were in Boston with their daughter Allie, and for those who do not know, Allie had heart surgery which took eight hours a little less than two weeks ago and she is in the audience tonight. Mr. Berns stated that he thought the toughest thing he has done in his life to date was the Council race on November 3rd but the toughest thing he has done in his life was sit through his daughters eight hour surgery two weeks ago. Mr. Berns stated that he literally feels at this time that he has the weight of the world off of his shoulders. Mr. Berns wanted to thank everyone for bearing with him through the last few months and through the campaign. Mr. Berns told everyone on Council that he looks forward to working with his colleagues on Council, the Mayor and the Department Directors. Mr. Berns stated that the City is run superbly and the Mayor and Council do a great job but the people sitting off to his right are the people that really do it.

Mr. Jacobs thanked Mr. Pekarek and the Service Department for all their hard work during the winter.

DEPARTMENT DIRECTOR'S

None.

CITIZEN'S REMARKS

CM 2016-23

FINANCE AND INSURANCE COMMITTEE(continued)

Abstain: None.
No: None.
Not Voting: None.

MOTION ADOPTED-RULES SUSPENDED

Moved by A. Isaacson, seconded by J. Berns, that Ordinance No. 2016-20 be adopted.

ROLL CALL Yes: J. Berns, A. Isaacson, M.M. Jacobs,
B.B. Janovitz, B. H. Linick, J. Pasch

Abstain: None.
No: None.
Not Voting: None.

MOTION ADOPTED

PLANNING AND ZONING COMMITTEE

1. Submitted to Council an Ordinance amending Part Eleven, Title Three, Sections 1121.04, 1127.04, 1129.05, 1131.06 and 1132.04 of the Beachwood Codified Ordinances; and declaring this to be an urgent measure.

ORDINANCE NO. 2016-21 – Introduced by James Pasch
AN ORDINANCE AMENDING PART ELEVEN, TITLE THREE, SECTIONS
1127.04, 1129.05, 1131.06 AND 1132.04 OF THE BEACHWOOD CODIFIED
ORDINANCES; AND DECLARING THIS TO BE AN URGENT MEASURE

Moved by J. Pasch, seconded by B.H. Linick, that Ordinance No. 2016-21 be placed on first reading and referred to the Planning and Zoning Commission on January 19, 2016.

ROLL CALL Yes: J. Berns, A. Isaacson, M.M. Jacobs,
B.B. Janovitz, B. H. Linick, J. Pasch

Abstain: None.
No: None.
Not Voting: None.

MOTION ADOPTED

2. Planning and Zoning Committee
Ordinance No. 2015-94 An Ordinance amending BCO Chapter 1155.05(i) Keeping of Fowl.

Placed on First Reading and Referred to the Planning and Zoning on: July 13, 2015
Referred back from the Planning and Zoning Commission on: September 24, 2015
Placed on Second Reading on: October 19, 2015
Set for Public Hearing on: December 7, 2015
Remain on Third Reading on: December 7, 2015
Failed on: January 19, 2016.

CM 2016-24

PLANNING AND ZONING COMMITTEE(continued)

Mr. Smerigan stated that this is an update to the current Ordinance because of issues with the coops for the chickens and based on his analysis the distances made it virtually impossible to place the coops anywhere in the City. Mr. Smerigan stated that if the intent is to have chickens anywhere in the City of Beachwood the distance would need to be adjusted. Mr. Smerigan stated that he made the distance something that would allow the larger properties within the City to be able to keep chickens and other fowl. Mr. Smerigan stated that in addition there were clarifications that were added to the regulations by the Planning and Zoning Commission with regard to the fact that there have always been provisions that the chickens had to be in a coop along with size requirements with the coop and specific limitation on the number of chickens that can be kept so that there was no questions as to what was permitted. Mr. Smerigan stated that what you have are amendments to the existing regulations.

Mr. Pasch confirmed with Mr. Smerigan that the code does not allow for roosters. Mr. Pasch stated that in addition a provision was also added which requires the resident to obtain a permit thereby giving the City a mechanism to know who is keeping chickens. Mr. Pasch stated that it also limits the number of chickens to four. Mr. Pasch stated that this issue came up during his campaigning and he was asked by multiple people as he went door-to-door and there seemed to be a desire amongst some residents to have the ability to own chickens. Mr. Pasch stated that the City has always allowed chickens but the distance did not allow for residents to have them on their property.

Mr. Smerigan stated that it was clearly the intent to permit this under certain circumstances but unfortunately the way the rules were written basically exempted every property in the City of Beachwood. Mr. Smerigan stated that there have been requests to the Building Department to keep chickens.

Mr. Berns stated that when he formerly lived on Glenhill the lot square footage was approximately 7,000 square feet and he cannot see having chickens in the backyard without a disturbance. Mr. Berns stated that when he lived there he had a dog in their backyard and obviously you have to bring dogs in your house if they are barking. Mr. Berns stated that he has a real problem with this especially in the north end of the City where there are smaller lots. Mr. Berns stated that even if permits are required it still takes times for the Building Department to come out and discuss this with the resident. Mr. Berns stated that he has strong reservations about this at this time.

Mrs. Janovitz stated that she has also spoken with a number of residents and because of the density of City and the smaller lots, numerous residents are not in favor of allowing chickens. Mrs. Janovitz stated that there is noise, not the same as roosters, but there is still a lot of noise, smell is involved and apparently the chickens can attract other predators and if they cannot get into the chicken coops, because they are supposed to be covered on the sides and tops, they will look for other prey. Mrs. Janovitz stated that she heard that the chickens also attract rodents and there are numerous residents who are concerned especially in the high density areas being only 20 feet from the chicken coops. Mrs. Janovitz stated if a resident is outside on their patio having dinner and chickens are only 20 feet away, people are not happy about that and they feel it changes the character of Beachwood.

CM 2016-25

PLANNING AND ZONING COMMITTEE(continued)

Mr. Pasch stated that he would like to add as a counterpoint that he really does not think that enough people are going to go out and buy chickens to change the character of Beachwood. Mr. Pasch stated that he gets that the City is not a rural community and there are plenty of surrounding suburban cities that do allow for chickens such as Cleveland Heights. Mr. Pasch stated that Cleveland Heights is not a rural community and he does not think that it has altered the character of the community. Mr. Pasch stated that while he understands that there is definitely more density issues in some areas of the City than in some of the neighboring cities he thinks that the City would find that it is a rarity and for the people that do want chickens it would be a nice luxury to accommodate their lifestyle.

Mr. Isaacson asked under what circumstances would the permit be revoked.

Mr. Griswold stated that under BCO Chapter 660 it provides for noxious odors and filthy accumulations and basically no person will cause to allow filth, noise from substance, within a property thereby revoking a permit. Mr. Griswold stated that when this was before Council on January 19th, he did send an email out asking if there were any questions from Council regarding same, although it might not have made it to the new Council members. Mr. Griswold also stated that the fowl are not permitted to be housed inside any residential structure. Mr. Griswold stated that there is also a penalty section relative to the violation of any of the rules and requirements that would cause that permit to be revoked and the chickens to be removed.

Mr. Isaacson stated that in the event a permit was revoked is there an appeal process.

Mr. Griswold stated that any appeal to the Building Commissioner goes to the Planning and Zoning Commission.

Mr. Isaacson asked if a permit was revoked does the resident have to wait until the end of the month until the Planning and Zoning meeting.

Mr. Griswold stated yes and that is true regarding any appeal to him regarding either the Planning or Building Code.

Mr. Linick stated that the City is using the term fowl is there any reason why we cannot just say chickens. Mr. Linick stated that there are other animals that fall under that category.

Mr. Smerigan stated that he believes geese and ducks are included.

Mr. Linick asked is it the intent that people want fowl including other animals not just chickens.

Mr. Smerigan stated that at the time that this Ordinance was originally adopted it came out of one of the Committees of Council and Council researched and invited folks to meet with them during Committee meetings while they were developing the Ordinance. Mr. Smerigan stated that the information that was incorporated in the regulations at that time was part of what they brought in

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from other communities regulations and commentary from experts that were brought in from urban farming. Mr. Smerigan stated that the only issue that has continued to be a problem was distance. CM 2016-26

PLANNING AND ZONING COMMITTEE(continued)

Mr. Smerigan stated at that time there were distances for goats and other things as well and the distance for chickens was included in those regulations. Mr. Smerigan stated that he drafted the amendment along with Mr. Griswold and Mr. Reali but he did not draft the original regulations.

Mr. Griswold stated that the original meeting was in July, 2011, when there was a presentation by Ms. Morgan Taggart who was the program specialist from the Ohio State University County Extension Program and that is when the regulations came about regarding goats and chickens. Mr. Griswold stated that goats were the focus at that time and the regulations regarding goats and chickens were also included in those regulations and it was determined at that time that there were only 10 or 12 properties in the City that could actually fulfill that requirement with a 200 foot setback.

Mr. Linick stated that as he recalls the person requesting it at the time had property that would have satisfied that requirement at that time.

Mr. Smerigan stated that her property did not satisfy the requirement and what happened was the distance was greater than she could have even complied with. Mr. Smerigan stated that there was intent to let her do it but her property would not have met the permit.

Mr. Linick stated that he brings this up because if people are referring to chickens there could be a wild turkey also.

Mr. Smerigan stated yes including ducks and geese.

Mr. Isaacson stated that maybe Council should tighten this up and say chicken instead of fowl.

Mayor Gorden asked Mr. Griswold for a few comments regarding the permit and if it is revoked what is the warning process because he would like to make sure that Council and the audience understand what is involved.

Mr. Griswold stated that with a permit revocation as the City would do with other permits that were revoked it would be a 30 day period in which that individual would have the right to remove it and in the case of animals the resident would have the opportunity to take them to another jurisdiction. Mr. Griswold stated that the appeal process decision to revoke would go to the Planning and Zoning Commission. Mr. Griswold stated that the City would not revoke a permit and suggest that the chickens would have to be removed the next day.

Mr. Jacobs stated that this Ordinance is one of the few Ordinances that Council has changed a few times due to the fact that there is a group of people who are looking for chickens. Mr. Jacobs stated that a few years ago Council changed the Ordinance for a particular person who wanted goats and chickens and they brought in a speaker from the Ohio State University to explain the benefits of

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having fresh eggs. Mr. Jacobs stated that he understands and respects people who like fresh eggs. Mr. Jacobs stated that he voted for the Ordinance last time because the Ordinance state that it

CM 2016-27

PLANNING AND ZONING COMMITTEE(continued)

required a little over an acre of land but now this Ordinance is reducing the distance as Mr. Berns pointed out and the lots are only 40 feet wide. Mr. Jacobs stated that he lived on Edgehill and his lot was 40 feet wide and if people have chickens they are practically at your back door. Mr. Jacobs stated that not only on the north side of the City but there are homes on Duffield and Hazelmere and those streets also have very little backyards. Mr. Jacobs stated that this summer he had a telephone call from a resident whose neighbors chickens were running around and walking down the driveway.

Mr. Jacobs stated that Council needs to consider the neighbors and if you live next to a house with a chicken coop the chickens make noise and are walking around. Mr. Jacobs read an email in part...Dear Mr. Jacobs, I cannot believe that City Council is considering putting chicken coops in the community, this is outrageous. This is an upper middle class community and not a rural area these chickens will attract rodents and other vermin. Mr. Jacobs stated that he agrees, this is a city not a rural area for goats and chickens and he does not support this Ordinance.

Mr. Pasch stated that for a point of clarification, this Ordinance first went to the Planning and Zoning Commission on July 13, 2015 and the Planning and Zoning Commission sent it back to Council on September 24, 2015 with amendments.

Moved by B.H. Linick, seconded by J. Pasch, that Ordinance No. 2015-94 be adopted.

ROLL CALL	Yes:	J. Pasch
	Abstain:	None.
	No:	J. Berns, A. Isaacson, M.M. Jacobs, B.B. Janovitz, B. H. Linick,
	Not Voting:	None.

MOTION FAILED

RECREATION AND COMMUNITY SERVICES COMMITTEE

1. Submitted to Council an Ordinance authorizing a one (1) year Facilities Usage Agreement between the City of Beachwood and the Beachwood Board of Education commencing on January 1, 2016 and expiring on December 31, 2016; and declaring this to be an urgent measure.

ORDINANCE NO. 2016-22 – Introduced by Justin Berns
AN ORDINANCE AUTHORIZING A ONE (1) YEAR FACILITIES
USAGE AGREEMENT BETWEEN THE CITY OF BEACHWOOD AND
THE BEACHWOOD BOARD OF EDUCATION COMMENCING ON
JANUARY 1, 2016 AND EXPIRING ON DECEMBER 31, 2016; AND
DECLARING THIS TO BE AN URGENT MEASURE

Mrs. Carmen stated that she has met with the Schools at length along with their legal representation and she feels that these are the best terms that they could come up with at this time.

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Mrs. Carmen stated that there is a significant increase over last year but the Schools will be taking over the landscaping and care of all the fields which the City would have normally done. Mrs. Carmen

CM 2016-28

RECREATION AND COMMUNITY SERVICES COMMITTEE(continued)

stated that the City took over the control of the fields in May when school let out and returned them to the Schools in the beginning of August. Mrs. Carmen stated that once they identified through Mr. Hardis and the Schools legal counsel what was entailed they agreed to take care of the fertilization, preparation and daily maintenance of all the fields the City would be using. Mrs. Carmen stated that essentially equated the increase.

Mr. Jacobs stated that the Schools will be performing some work on their property therefore the City will be moving one camp to Hilltop.

Mrs. Carmen stated that initially there was push back from any camps at the School but the pick-up and drop-off will be on the Shakercrest side and she will be working with the Police Department to obtain and in-and-out flow.

Mrs. Janovitz stated that she had mentioned to Mr. Reali that she had one problem with a provision in the Contract that stated any extension we agree upon for next year's Contract would be an increase in an amount no less than 3% for next year. Mrs. Janovitz stated that she does not understand why the City would sign a Contract now that ties the City into agreeing that if the City uses the Schools next year that it will be 3% more without negotiating the terms next year.

Mr. Reali stated that that provision is not binding.

Mrs. Janovitz stated that what if the City does not have a Contract with the Schools at all next year but it states that if the City does agree to a Contract why would we agree to pay at least 3% more at a cost of another \$10,500.00 next year without negotiating.

Mr. Reali stated the City's intent is to start this process over.

Mrs. Janovitz stated that no matter when we start it, the way she reads it, were agreeing that the minimum cost will be \$360,500.00 if the City has a Contract at all. Mrs. Janovitz stated that she does not think the City should lock in this year to paying 3% more next year.

Mr. Jacobs stated that this is a one year Contract.

Mayor Gorden stated that the City asked the legal counsel for the Schools if that could be stricken and they stated no. Mayor Gorden stated the City could not get the answers they needed in time even though the City started this process in July. Mayor Gorden stated that due to planning that the Schools needed to do regarding the Master Plan it prohibited them from being in a position to negotiate at an earlier date.

Mr. Pasch stated that he plans on voting for this legislation this evening because it is the only way to move forward for this year because the City needs the use of the fields. Mr. Pasch stated that

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even though the price has increased the Schools are maintaining the fields this year which is not something they did in prior years which makes the cost balance out to what the City has paid in the past. Mr. Pasch stated, however, he looks forward over the next year to work with the Schools on

CM 2016-29

RECREATION AND COMMUNITY SERVICES COMMITTEE(continued)

this and you look at the fields, the salt the City provides to the Schools, permit fees associated with the future of the Schools he believes that the City and the Schools need to have a big pow wow about how the City pays for things and how money changes hands back and forth. Mr. Pasch stated that although we are two separate entities we are still the same tax base and we are still the same City and the kids are using the City services and school services. Mr. Pasch stated that when you look around to other surrounding suburbs throughout the State of Ohio no other suburb even the higher end suburbs throughout the State have these types of contracts. Mr. Pasch stated that instead of a contract there is an agreement for exchange of services from the cities to the schools and the schools to the cities. Mr. Pasch stated that he looks forward to discussing the City's options.

Mr. Jacobs stated that when these contracts were started many years ago the City was in the \$150,000.00 range and now the City is up to the \$350,000.00. Mr. Jacobs stated that he is upset that the City is between a rock and a hard place right now because the City started the process early and did not receive it back until December and now the City is in a 30 day time crunch to get this done. Mr. Jacobs stated that \$350,000.00 is a lot of money even though the Schools are taking over the fields. Mr. Jacobs stated that he asked the Law Department to look into other cities such as South Euclid, Lyndhurst, Orange and cities in southern Ohio, and they responded, as Mr. Pasch mentioned, and they never heard of such an agreement concerning a city and school. Mr. Jacobs stated that other communities have either a handshake agreement or an in-kind agreement. Mr. Jacobs stated that the City is going to begin discussion on this in May or June.

Moved by J. Berns, seconded by J. Pasch, that Ordinance No. 2016-22 be placed on first reading.

RECREATION AND COMMUNITY SERVICES COMMITTEE(continued)

ROLL CALL	Yes:	J. Berns, A. Isaacson, M.M. Jacobs, B.B. Janovitz, B. H. Linick, J. Pasch
	Abstain:	None.
	No:	None.
	Not Voting:	None.

MOTION ADOPTED-RULES SUSPENDED

Moved by J. Berns, seconded by J. Pasch, that Ordinance No. 2016-22 be adopted.

ROLL CALL	Yes:	J. Berns, A. Isaacson, M.M. Jacobs, B.B. Janovitz, B. H. Linick, J. Pasch
	Abstain:	None.
	No:	None.
	Not Voting:	None.

MOTION ADOPTED

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Mayor