

RECORD OF PROCEEDINGS
Minutes of Bellbrook City Council Meeting
March 11, 2019

PRESENT: Nick Edwards
Forrest Greenwood
Darryl McGill
Elaine Middlestetter
Dona Seger-Lawson
Mike Schweller
Mayor Robert Baird

GUESTS Amy Blankenship, Attorney representing the City
Michaela Grant
Jeff Green
John Stafford
Steven Baldinger

CALL TO ORDER

Mayor Baird called the work session to order at 6:00 pm.

WORK SESSION

- Annexation Proposal

Mr. Schweller recused himself from the conversation due to his company's relationship with Oberer Homes.

Mayor Baird gave a brief overview behind the annexation proposal. Sugar creek Township is proposing that the city of Bellbrook annex parkland to effectively prevent the city of Centerville from annexing the Rammel property. Mayor Baird and City Manager Melissa Dodd met with some of the Township Trustees about this.

City Manager Dodd and Mayor Baird were invited to a meeting with Mike Pittman and Township Administrator Barry Tiffany at the Township office on February 14 without knowing the topic. They were presented with this plan as a benefit to both communities. Sugar creek Metropark and Bill Yeck Park could be annexed by Bellbrook as long as there is a private property owner of a contiguous parcel as the petitioner. This would make it a Type 1 annexation where all parties: petitioner, township, and city agree on the terms. Currently there is no petitioner. The Township asked a property owner to petition, but they declined. So at this point, this is just a theory. After a property owner completes a petition, the Township and City have to create and execute an annexation agreement.

Mayor Baird added that Sugar creek Metropark is part of Montgomery County. A public entity, like a park, can be annexed without their permission. Although it is possible for the County to fight the annexation.

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Attorney Amy Blankenship explained that the city could approach a property owner to ask them to petition for annexation. This happens often. In 2013 the Economic Development Director for Centerville approached the owners of the Rammel property about being annexed into Centerville. In the Ohio Revised Code, political subdivisions do not have a say in it, so when a property is annexed the city takes all the township land behind it. Townships do not have a way to stop this. All they can do is cause legal problems, which cost time and money.

Mrs. Dodd stated that the annexation proposal, once created, would be brought before Council as a Resolution. The Mayor and Mrs. Dodd were surprised that a draft proposal had already been written by Barry Tiffany of Sugarcreek Township. The first draft left Mrs. Dodd and Mayor Baird with a lot of questions. She added that she was given a one-page document that stated how this proposal was of benefit for both the Township and the City. Some of the things in that document were not true and some of the promises had not been included in the proposal sent to the City. Mrs. Dodd had a detailed phone conversation with Mr. Tiffany and she noted what was said. Mr. Tiffany explained that the agreement was taken from one used by Powell in Liberty Township. Today, a new draft was provided which attempted to correct some of those questions. The agreement would need to be examined closely to make sure nothing was missed. The two main concerns Mrs. Dodd has are the responsibility for the roads and the legal costs. The proposal the Township has drawn up states that the City would annex the land of Sugarcreek Metropark and Bill Yeck Park. It is 597 acres consisting of 17 parcels (the petitioner's parcel would be the 18th). The new City border would be Wilmington-Dayton, Conference, and Ferry Roads. The initial concern is that Wilmington-Dayton Road is in need of attention. It is a county road. Mr. Tiffany assured Mrs. Dodd that the annexation lines do not have to follow property lines. She stated that she did not know if that would relieve Bellbrook from the responsibility to fix or maintain that road. The Township would still maintain conference and Ferry Roads. Sugarcreek is asking that all parcels remain in the Township and so would be in both the Township and City. The one private property owner would be required to pay double taxes. Mrs. Dodd thought it was Type 2 annexation that included double taxation and that it was not a requirement of a Type 1 annexation. Mr. Tiffany said that is normally true, but they can include that requirement in the proposed agreement if Bellbrook would agree to this. The Township, not Bellbrook, designed this agreement. The secondary concern was the legal costs. In the initial meeting, Mr. Tiffany said the Township would pay all legal costs. However, the draft proposal sent states that each entity would pay their own legal costs. Mrs. Dodd asked Mr. Tiffany about this and he asked about the City's liability insurance. He said this would only cost Bellbrook the \$1,000 deductible and then the insurance would pay the rest. The City Manager explained that is not accurate. Since the City does not know how or where or under what basis any claims could come. With that in mind, the City could be responsible for paying legal costs. In conclusion, Mrs. Dodd stated that the Township is not offering the City anything except the taxes from the one parcel owned by the petitioner. She opined that even though the Township states they will hold up their responsibilities, the prospect of that into perpetuity, or 50 years, is not assured. Will this agreement be upheld when there are different Council Members and Trustees in office?

The Mayor restated that in the original meeting the Township said the City would incur no legal fees and the Township would maintain the roads, and fire and police services. They have jurisdiction even

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though the parks department has its own police. The road ownership is questionable in Mr. Baird's opinion. His question to Amy Blankenship is how enforceable is this agreement?

Mrs. Blankenship answered that there is always the question when a group enters into an agreement that stretches into the future. If future officials are unhappy with the agreement, they can take legal action. So can any City Council bind a political subdivision into a permanent agreement? Mrs. Blankenship said the answer is no. Since there is no continuity of leadership even 50 years is a huge commitment. Either side could bring litigation against the other.

Mayor Baird added that even if the City signs the agreement it still has to be approved by the County Commissioners.

Mrs. Seger-Lawson asked if the City can amend the agreement any way we want. Mr. Baird answered that could be done. However, he added, that it would never protect the City if a developer like Oberer or a property owner sued us.

Mrs. Middlestetter asked if Oberer or the owner of the Rammel property could sue the City since we are not doing anything to their property. Mrs. Blankenship answered that they could not win a suit. However, that would not stop them from filing an injunctive action to keep the annexation from happening. The process takes 9 to 12 months to work through the common pleas court and possibly arguing the same case on appeal.

Mrs. Dodd called Tom Judy with the carrier of the City's liability insurance to ask for advice. He said it is impossible to say if a legal claim is insurable since we do not know where the claim would come from. He said it is dangerous to assume insurance would pay anything. In addition, the insurance premiums would go up if an insurance claim was made.

Mr. Edwards asked what the compelling reason was for doing this. Mayor Baird qualified that he is not saying he supports this plan, but answered that the reason is that the Township residents want this. The City and Township have worked well together for the last few years, but the benefit is for the residents overall, not specifically Bellbrook residents.

Mr. Edwards restated that the benefit would mainly be for the residents who are adjacent to the land in question. And, in the end, if the Rammel property is developed it is Sugarcreek Township that benefits, not Bellbrook.

The Mayor added that the Township is not giving the City the Rammel property. This would just protect it from being annexed by Centerville.

The Mayor explained that he had the original idea that Bellbrook would annex that property Type 1 which gave the Township this idea. But now if that happened it would include double taxation which the Mayor has been against. The City could go back to them with that proposal but would need to agree to 2 ½-acre lots. Since there is no petitioner at this time, there really is nothing to be done. This

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is just a conversation to be prepared if a petitioner comes forward. The first draft proposal from Sugarcreek Township has too many holes and would need many changes to be agreeable to the City.

Mrs. Seger-Lawson asked if we could add that the property taxes be split between the Township and City. Mr. Baird answered that since it would only be one property the tax revenue is insignificant. Mrs. Seger-Lawson added that if a development was built on annexed property the Township would benefit from those property taxes.

Mr. McGill wanted to remind Council that the budget shows that in three years Bellbrook will be facing financial difficulties without any annexations. But, why would Bellbrook consider a proposal that comes with the possibility of a major road improvement that would cost the City. Mr. Baird opined that this annexation could open the possibility of future annexations. But, unless Ohio law changed this would always be Type 2 annexations with double taxation issues. Mrs. Blankenship added that the law recently changed slightly to eliminate double taxation of income. Bellbrook does not have an income tax.

Mr. Edwards asked if the future annexation projects could recoup some of the expense. Mayor Baird answered that the only way the City could gain would be through the diversification of the tax base. Then a levy would be needed. Mr. Edwards expressed his concern for current residents. Mrs. Dodd added that at the end of the day, this annexation is about 600 acres of parkland that will never provide tax money to the City.

Mrs. Blankenship reiterated that a property owner must always choose to be involved and therefore accept double taxation. The other option is much harder. Citizens do not like these annexations. The Township lobby is strong. There are always discussions at the state house about revising these sections of the code. The laws could look very different in five years.

Mr. Edwards said that there is no way to write an agreement that would protect Bellbrook in the future. Mrs. Blankenship is seeing that the developer has already brought in a lawyer to argue a non-annexation agreement with Sugarcreek Township. But no one believes the current agreement could hold up in court.

Mrs. Middlestetter opined that people do not want to see a repeat of what happened with Centerville and the Cornerstone development. According to all the long-range plans, the southern end of the Township is supposed to remain rural with nothing smaller than 2 ½-acre lots.

Mr. Edwards asked if the Township paid for their own legal fees in that case. Mayor Baird said County Prosecutors usually handle township matters. Mrs. Blankenship answered that she thought they did. Some townships have their own law directors.

Mrs. Seger-Lawson asked if a condition be added to the agreement that Bellbrook would receive money from the Township. Mrs. Blankenship said even if the Township agreed to it today, there is nothing to keep them from refusing to continue to pay into the future. This could cause litigation in the future. Mayor Baird believes that litigation is a definite possibility.

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Mrs. Middlestetter asked if anyone knew if Cliff Elliot gave Rammel the property. Mayor Baird opined that there was a deal made but he does not know the details.

The Mayor asked what the Council should do at this point since the Council is not meeting again until April 8. Mrs. Blankenship answered that there is no time limit on this issue without a petitioner.

City Manager Dodd explained that if a petitioner comes forward, an agreement would be brought before Council to be discussed as new business and either make a motion to accept the agreement or not.

The City Manager will be meeting with Centerville's City Manager and can ask his thoughts. Mrs. Blankenship stated that there is no reason why any member of Council cannot reach out to contacts to learn more and then any official business will be discussed in another open meeting.

Mr. Edwards made a motion to adjourn the work session, which was seconded by Mr. Greenwood. The Clerk called the roll. Mr. Edwards, yes; Mr. Greenwood, yes; Mr. McGill, yes; Mrs. Middlestetter, yes; Mrs. Seger-Lawson, yes; Mr. Baird, yes. The motion carried.

CALL TO ORDER

Mayor Baird called the City Council meeting to order at 7:00 pm.

ROLL CALL

Mr. Edwards, yes; Mr. Greenwood, yes; Mr. McGill, yes; Mrs. Middlestetter, yes; Mrs. Seger-Lawson, yes; Deputy Mayor Schweller, yes; Mayor Baird, yes.

FORMAL APPROVAL OF MINUTES

After polling members of City Council, as there were no corrections or additions to the regular meeting minutes of February 25, 2019 Mayor Baird declared the minutes approved as written.

MAYOR'S ANNOUNCEMENTS/SPECIAL GUEST

Mayor Baird welcomed Jeff Green, the new Planning and Zoning Assistant. Mr. Green comes to Bellbrook with his MPA from Wright State and six years' experience from the city of Riverside.

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INTRODUCTION OF ORDINANCES

Mr. Edwards read **Ordinance 2019-7 An Ordinance Establishing Section 1060.09 “Billing” of the Bellbrook Municipal Code.**

City Manager Melissa Dodd explained that prior to this the city did not have a procedure for collection for billing for garbage collection for residents who do not have water service. Therefore, there was no way to charge late fees or discontinue service. This adds procedures that mirror those for water service.

Mr. Edwards made a motion to introduce Ordinance 2019-7 An Ordinance Establishing Section **1060.09 “Billing” of the Bellbrook Municipal Code.** Mr. McGill seconded the motion. The Clerk called the roll. Mr. Edwards, yes; Mr. McGill, yes; Mr. Greenwood, yes; Mrs. Middlestetter, yes; Mrs. Seger-Lawson, yes; Mr. Schweller, yes; Mr. Baird, yes. The motion carried 7-0.

Mrs. Seger-Lawson read **Ordinance 2019-8 An Ordinance Establishing Section 1060.10 “Operation Fees” of the Bellbrook Municipal Code.**

Mrs. Dodd stated that this ordinance was related to the previous ordinance.

Mrs. Seger-Lawson made a motion to introduce **Ordinance 2019-2 An Ordinance Establishing Section 1060.10 “Operation Fees” of the Bellbrook Municipal Code.** Mrs. Middlestetter seconded the motion. The Clerk called the roll. Mrs. Seger-Lawson, yes; Mrs. Middlestetter, yes; Mr. Edwards, yes; Mr. Greenwood, yes; Mr. McGill, yes; Mr. Schweller, yes; Mr. Baird, yes. The motion passed 7-0.

RESOLUTIONS

Mr. McGill read **Resolution 2019-H A Resolution Authorizing the City Manager to Sign an Agreement with the Greene County Engineer’s Office for the Collective Paving Program for 2019.**

City Manager Dodd explained that was a yearly program that takes advantage of collective bargaining. Service Director Pasley had identified the roads that need re-paving and/or milling this year.

Mr. McGill made a motion to adopt **Resolution 2019-H A Resolution Authorizing the City Manager to Sign an Agreement with the Greene County Engineer’s Office for the Collective Paving Program for 2019.** The motion was seconded by Mr. Schweller. The Clerk called the roll. Mr. McGill, yes; Mr. Schweller, yes; Mr. Edwards, yes; Mr. Greenwood, yes; Mrs. Middlestetter, yes; Mrs. Seger-Lawson, yes; Mr. Baird, yes. The motion passed 7-0.

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Mr. Schweller read **Resolution 2019-I A Resolution Adopting the 2019 Comprehensive Plan for the City of Bellbrook**. Mr. Schweller opined that since the previous plan was from 1974 the \$25,000 fee is well worth it.

Mrs. Dodd explained that this plan took 2 ½ years to create this plan using a walk-ability survey, online surveys, an open house and other public input. This was a long process through staffing changes both in Bellbrook and Regional Planning and Coordinating Commission. Devon Shoemaker with the help of Jessica Hansen deserves our thanks. The Planning Board reviewed the plan over a couple of months and approved it on February 28th. There is a lot of information in the Plan. Mrs. Dodd expressed her excitement to work with Jeff Green and others to execute the plan. The Planning Board has agreed to review the Plan annually and to keep it updated. Any revisions will be brought before City Council. The Planning Board has already scheduled their next meeting to begin working on flood plain issues.

Mr. Schweller is glad to hear that the plan will be reviewed annually and not every 45 years. Mr. Greenwood opined that a lot has changed in the city since 1974. All Council Members expressed their excitement about the Comprehensive Plan.

Mr. Schweller made a motion to adopt **Resolution 2019-I A Resolution Adopting the 2019 Comprehensive Plan for the City of Bellbrook**. Mrs. Seger-Lawson seconded the motion. The Clerk called the roll. Mr. Schweller, yes; Mrs. Seger-Lawson, yes; Mr. Edwards, yes; Mr. Greenwood, yes; Mr. McGill, yes; Mrs. Middlestetter, yes; Mayor Baird, yes. The motion carried 7-0.

CITY MANAGER REPORT

City Manager Dodd began by welcoming Michaela Grant as the new Utility Billing Assistant. Ms. Grant has been serving as an intern with Mrs. Dodd since January. This full-time position allows Ms. Grant to stay on with the City.

The Bellbrook Police Department posted internally for a Sergeant's position. This promotion creates an opening for a full-time officer. The opening has been posted for a lateral hiring which will minimize required training. The posting will remain open until April 15, 2019.

The Franklin Street grant has been approved. Bellbrook will be receiving \$342,965.00 in federal funding to create a buffer and pedestrian access for this street. The next step is to meet with ODOT and MVRPC to discuss the next steps.

Mr. Schweller asked about the funding for this since there is a shortfall and it is not in the budget. City Manager Dodd answered that she has reached out to OPWC and is hopeful that we will get more funding from them. The grant money will not be available for five years.

Mrs. Dodd expressed her surprise and delight at the success of the Downtown Beautification Project. She had hoped to sell and install one bench and one bike rack before the Sugar Maple Festival. Five of

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each have been sold so far! Locations for the benches and bike racks are being chosen. Once this is done, a new project will be chosen.

The City Manager gave an update on the slippage of Little Sugarcreek Road. The engineers' proposal arrived after the agenda was sent out. At the present time cones mark where the slipping is occurring. More rain could change that at any time. The plan begins with data collection of the slope, soil borings, alignment and profile of the road. This is a narrow area to begin with. The plan looks to alleviate the most pressing problem area while keeping the entire road improvement in mind. Mrs. Dodd reminded them that a plan for a walkway must be included. After the data collection, the engineering company will propose options with costs and give their recommendation. The cost of this plan including the geotechnical monitoring and groundwork is \$24,800. There were three add-ons; traffic control (a savings of \$1,300 if the City does this), borings with sensors with each reading costing \$600. The LJB engineering plan and the separate geotechnical engineering costs are all included in the \$24,800. If the Council approves the plan, the City Manager can sign the contract to start the work. It should take 10 weeks to complete. One of the most cost effective and effective measures to stop the road slippage is to bore down and shoot foam into the ground to create a pylon. Then the road correction could happen above it. This project covers the road from Franklin Street to the Vineyards.

Mrs. Middlestetter wanted to make sure that the flood plain was taken into consideration.

Mrs. Seger-Lawson asked about the land that was being gifted to the city for a pathway along that road. Mayor Baird explained that the land cannot be gifted until more of the property has been developed. Mrs. Dodd added that the lawyer discovered that the parcels have a lien that will need to be dealt with first.

COMMITTEE REPORTS

Service: none

Safety: Mr. Greenwood reminded citizens that the time change is a great time to check your smoke detectors. He also asked if the Service Department has been taken care of trees that fell during the latest windstorm. Mrs. Dodd said she would check on the status of the cleanup.

Finance/Audit: none

Community Affairs: none

OLD BUSINESS

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NEW BUSINESS

Mr. Greenwood commented that there were many trees down after the last windstorm. Property owners need to take care of them.

The funeral for Sergeant Brian Meade took place on Saturday, March 2. Council thanked the Police Department for doing a great job that weekend. The procession from the church to Calvary Cemetery required the help from many departments around the area.

Special thanks to the following organizations for their service:

- University of Dayton Police Department
- Vandalia Police Department
- Clayton Police Department
- Sugarcreek Township Police Department
- Ohio State Patrol
- Montgomery County Sherriff Department
- Greene County Sherriff Department
- Dayton Police Department
- Lebanon Police Department
- Fairborn Police Department
- Beavercreek Police Department
- Xenia Police Department
- Kettering Health Network Police Department
- Enon Police Department
- Centerville Police Department
- Ohio Department of Natural Resources
- Yellow Springs Police Department

OPEN DISCUSSION

Mr. John Stafford, 2487 Indian Wells Trail, stated that he is part of the group advertising to vote no on the upcoming school levy. He said he spoke with the City Manager that morning about the signs his group had put up along the roads over the weekend. Mr. Stafford stated that a few weeks ago he had called the City and spoken with Melissa Jones to learn the rules for political signs. He wanted to do everything correctly. He says he was told the signs could be put up anywhere and at any time and the City would not do anything about them. Mr. Stafford claims the school district has paid for and put up the "I Love Bellbrook Schools" signs around town and in the public right-of-ways. The school's signs have been up for four weeks. Mr. Stafford's group put their signs this past week. He said he was told that the school called the City over the weekend to complain about the "Vote No" signs and were told they would be taken down. He found this news disturbing. Then the first thing this morning on the Bellbrook Facebook page was a notice about the set-back rules. Mr. Stafford called the City Manager who admitted to posting that information. He asked her if the school had reached out to her, and she denied it. He asked her if she spoke with the school four weeks ago when they put up their signs. Mrs. Dodd explained that the City had been down an employee to handle code enforcement. He said he felt

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she did not adequately answer his question. Mr. Stafford explained that he does not mind the rules concerning signs, but he expects consistency. He said that the signs have been taken down which confuses him. He wants to know what the rules are and that they will be followed consistently by the City. Mr. Stafford said that in terms of the right-of-way, some of his signs were put up next to the "I Love Bellbrook Schools" signs. He restated that if a City employee tells him it is okay, that should be the rule. But he was told something completely different this morning by the City Manager. He is unhappy with how it transpired. If the signs are not allowed, Mr. Stafford believes he should have received a phone call to remove them and a call should have been made to the school four weeks ago. His goal tonight is to receive clarification on the rules for political signs and to retrieve his signs that the City gathered. He said the school needs to be doing the same thing. The school levy is a touchy issue affecting our senior citizens and millennials who will have financial trouble if the levy passes. He added that this is a big issue his group is trying to tackle. He opined that he is surprised by the anger and nastiness that has come out.

Mayor Baird said he spoke with Mr. Stafford this afternoon. Mr. Baird explained that there are two Melissa's in the City office and a new Zoning Assistant. He recounted the time when his election signs ended up in "sign jail". He believes it is important to be consistent. One of the difficulties is that the rules are different in the Township. And the lines dividing City land versus Township land are complex. All the cities have essentially the same ordinances concerning signs. Some cities and townships require a permit for signs which gives them a contact number.

Mr. Stafford explained that he had also called Sugarcreek Township who told him they would not touch any signs that were placed on their land. The Township's position is that these signs are up for a short period of time and they can fight it out. Again he said that the City employee he spoke with previously was very specific and read through all the regulations but then said that you can do whatever you want with political signs. He expressed that his is disturbed by what happened this morning considering he was trying to follow the rules as he understood them. He shared that the levy fight is getting ugly and he has already been threatened with violence. He recounted one threatening call where the caller had neglected to block their number so Mr. Stafford knew who was calling. He asked for a map to show him exactly where the lines are so that he can follow the rules. He added that the school will be looked at for paying for the "I Love Bellbrook Schools" signs even though they do not have the word "levy" on them. He believes that the City Manager did not tell the school the same rules because they are the schools. He said he tries to judge people by their actions. He accused someone of reaching out to the City Manager over the weekend. He said he believes she will deny it but she did admit to putting the post up on the City's Facebook page this morning. Which means since she did it first thing this morning proves someone talked to her over the weekend. He was told by the school administrators that the signs would be taken down.

Mayor Baird promised that the City will try to be consistent. They cannot be checking on signs all the time although they are going to be everywhere, as we get closer to the election. Townships have different rules.

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Mrs. Middlestetter said several citizens had complained to her about the signs in the right-of-way. The other Council Members echoed that and added that Bellbrook citizens are quick to complain about any signs.

Mr. Stafford countered that the "I Love Bellbrook Schools" signs have been up for four weeks but nothing was done until the "Vote No" signs went up.

Mrs. Seger-Lawson answered that if no one had complained about the other signs, they had not known about a problem.

Mr. Stafford relayed that he had complained about the first signs when he originally called the first Melissa weeks ago, but nothing was done. It needs to be the same for everyone. Council agreed that what happened was unfortunate.

Mr. Edwards and the rest of Council agreed that moving forward everyone is now aware of the rules and those will be upheld to the best of the City's ability.

Mr. Louie Schatzberg, 4082 Ridgetop Drive, stated that he understands that the locations have different rules, which he discovered when putting up Sugar Maple Festival signs a few years ago.

ADJOURN

Being no further business to come before this regular session of the Bellbrook City Council, Mayor Baird declared the meeting adjourned at 7:58 pm.

Robert L. Baird, Mayor

Pamela Timmons, Clerk of Council