



City Council Agenda

Minutes

Monday, October 12, 2020 at 7:30 pm

6550 N. High Street, Worthington, Ohio 43085

Virtual Meeting Information

Link through: worthington.org

Our Government – Live Stream

1. Call to Order

Minutes:

Worthington City Council met remotely in Regular Session on Monday, October 12, 2020, via Microsoft Teams videoconference. President Michael called the meeting to order at or about 7:30 p.m.

2. Roll Call

Minutes:

Members Present: Peter Bucher, Rachael R. Dorothy, Beth Kowalczyk, Scott Myers, David Robinson, Douglas K. Smith, and Bonnie D. Michael

Member(s) Absent: None

Also Present: City Manager Matt Greeson, Assistant City Manager Robyn Stewart, Law Director Tom Lindsey, Director of Finance Scott Bartter, Director of Service & Engineering Dan Whited, Director of Planning & Building Lee Brown, Director of Parks & Recreation Darren Hurley, Chief of Police Robert Ware, Chief of Fire & EMS Mark Zambito, Clerk of Council D. Kay Thress

3. Pledge of Allegiance

Minutes:

President Michael invited all to stand and join in reciting the Pledge of Allegiance to the flag.

Reports of City Officials

4. Policy Item(s)

a. Proposed 2021 Operating Budget & Five-Year Forecast

Minutes:

Mr. Greeson share that we are at the beginning of the budget process. Even though it feels like we have been talking financial statements, cash flow and financial impacts of the global pandemic for a long time, we are here again talking about the financial condition of the city but more specifically how we plan to budget for funds in 2021 so that we can continue the excellent services that we provide to our citizens.

The City Charter requires that the City Manager submit to City Council at least sixty days prior to the beginning of each budget year an operating budget estimate and an explanatory budget message after consulting with each department head. We have done that with this 2021 budget as well as the proposed 5-year Capital Improvements Plan.

This evening we plan to provide a high-level overview about the purpose of the budget, some about what services we are funding, and a look at the 5-year Forecast. As you know our City Budget identifies funds for all our services. In 2021 we are focused on maintaining that high level of service.

While we will be focusing on maintenance of existing services there are a few things that he wanted to note. Staff is recommending utilizing some of our fund balance to continue economic development along East Wilson Bridge Road, specifically the purchasing of several properties as part of the long-term redevelopment plan in that area. The 2021 budget focuses on doing that at the beginning of the year.

We have had some economic uncertainty with COVID-19, with the Stay at Home orders and because society is working differently today than it did only a year ago. One of the things that we are going to have to talk about and cope with is our projections and what we think may happen with revenues throughout an unpredictable 2021.

Mr. Greeson went on to explain that part of our strategy is to balance the budget through vacant positions. This budget relies on a larger percentage of unexpended appropriations. We are essentially balancing the budget on that one-time money called unexpended appropriations, which we have increased the percentage of. The way we are going to achieve that percentage is by maintaining some vacancies throughout the organization in 2021. There are some positions that will be in the budget but that will not be filled. If our financial conditions improve then we may fill those sooner but in the event that they do not, and we are at projections then we will have to manage them being vacant through the budget year.

Our Services include excellent Fire and Emergency Medical Services (EMS), Community Center programming, Economic Development, food waste composting and continuing to provide grants for non-profit organizations.

While funds have not been cut, they have also not increased with this recommended budget. Tomorrow our Cares Act Funding Committee will be meeting and discussing some near-term allocations because of some Cares Act funds being available to some of those that provide vital/human needs services.

Other services include supporting our Seniors, maintaining numerous parks, Police services as well as our Mayor's Court. Additionally the Service Department conducts leaf collection, snow and ice removal, assists with special events, street maintenance, the street tree program, winter holiday decorating and many other services that keep our city clean, safe, and what he would call elegant during the holiday season.

Mr. Greeson asked Finance Director Scott Bartter to report on the expenditure of funds on these various services. Mr. Bartter shared a slide that showed the numerical breakdown in terms of how much money is being spent on each program category. Our largest expenditure by far is Public Safety at 45% followed by Parks and Recreation at 18% and Engineering and Public Service at 12%.

How are all those services being accomplished? He showed a slide with the breakdown of program categories. Contractual Services (RITA, Trash collection and 911 call answering services) equals almost 22% with everything else being employee wages and benefits. Today's 2021 Staffing Chart shows 144 full-time positions when twenty years ago there were 160 full-time positions. We are currently operating with 139 full-time employees. That is a significant drop from twenty years ago in terms of full-time people. As Mr. Greeson mentioned earlier, the vacancies are accounted for in the budget by increasing unexpended appropriations by about 3.5% up to 5%. We can better control it that way. If revenues come in higher than anticipated, we can begin filling those vacancies as the funds will already be appropriated.

Additionally, Finance looked at all non-personnel lines for the prior four years and adjusted those based on spending history. It really tightens up our budget and makes that 5% unexpended somewhat difficult to obtain but that is what we currently have in the budget.

That moves us into revenue and how we pay for all these services. As you know, income taxes really drive the bus with 67% of all operating funds is from income tax revenue. When looking at just the General Fund, income tax revenue is about 71%, with property tax at 11% and Parks and Recreation is projected to be about 8%.

A deeper look reveals that projections for 2020 has income tax collections on pace to maintain the breakdown between withholdings (78%), individual income tax returns (11%) and business net-profit tax (11%) tax pretty much

where we have been historically. The 2021 estimate is set at \$26,480,500. The 80/20 split between General Fund and Capital Improvement Fund (CIP) puts \$21,184,400 in the General Fund and \$5,296,100 in the CIP. This is a 1.5% increase over the 2020 estimate. He would encourage members to think more of it as being only 0.20% over 2019 actuals. When we put these estimates together, that is happening without the information from the fourth quarter, we are finalizing these income tax projections in September so we do not yet have the income tax receipts for October, November or December. When he put together the estimate for 2020, we had a pretty robust fourth quarter which put our 2020 estimate at about 1.25% under 2019 actuals, so this brings it back in line. He is referring to this as stagnant income tax growth.

Parks and Recreation fees are extremely difficult to anticipate for 2021. He took the approach of a return to 2019 with this as well. The \$2,375,332 is the exact number in Parks and Recreation fees collected in 2019. Of course, this will be heavily dependent on when we can return to a full level of programming. He would not anticipate that occurring on January 1st, but this is where it currently sets. Additional estimates include EMS Transport Fees at \$700,000, Fire Protection Service \$500,000 and Riverlea Police Protection \$83,234, which is an increase.

Property Tax is another significant source of income for the City. The 2021 Property Tax estimate is set at \$3,665,330. The three funds that receive revenue from this stream are the General Fund (\$3,665,330), Police Pension Fund (\$214,935) and the General Bond Retirement Fund (\$124,800). This is an 8% increase from 2020 and reflects what we think may be a significant increase from the triennial update that is occurring for 2020, collection year 2021. Staff anticipates that the Gas Tax, and the Municipal Motor Vehicle License Tax (MMVLT) will remain flat, with an estimate of \$1,195,000 (\$925,000 and \$270,000 respectively).

5-Year Forecast for General Fund Revenue In looking at the 5-Year forecast, there was a large drop in 2020. Members may recall that in 2019 there were some one-time events such as a transfer of funds from the revolving fund but what is causing the drop in 2020 is updated estimates on the Parks and Recreation revenue dropping by almost 50%. In 2021, as we return to 2019 levels of Parks and Recreation revenue plus about 2019 levels of income tax, we increase to \$30,099,110 with gradual increases in the following years.

5-Year Forecast for General Fund Expenses On the expenditure side of the General Fund, in 2019 and 2020 there was a big jump but that is comparing actuals to budgeted. When you make that comparison, we always have more budgeted than what we have spent which is why we have unexpended

appropriations and expenditures that carry over into the next year as encumbrances. In 2020 we also had the transitioning from 911 call answering to NRECC, which caused a spike. We are anticipating a small drop in 2021 from 2020 expenditures and again in 2022 because we do not have the one-time expenditures for the CIC for economic development. There is also a 27th pay in 2021, which we have partially accounted for with the establishment of the 27th pay fund three years ago. He explained that each year we transfer \$50,000 into that account and while it is not fully funded, we are able to offset part of that expense. Next year we will continue the \$50,000 transfer and in eleven years when it occurs again, we should have the full amount covered.

5-Year Forecast – General Fund The next graph represented the Fund Balance from 2010 to 2025. In each of the years we are deficit spending. In 2021, it is projected that expenditures will exceed revenues by about \$335,000. That is with the 5% unexpended appropriations, which starts to dip into the Fund Balance. We already anticipate a big dip into the Fund Balance for 2020. We do not currently balance and are deficit spending by approximately \$350,000 to \$500,000 in each of the out years. Because we have strong fund balances, we will probably end 2025 still above the 35% Fund Balance Policy that Council adopted.

In switching gears, Mr. Bartter reported that we have a Convention & Visitor's Bureau fund that was established with 66% of hotel/motel revenues received. It did receive a significant one time return of money from the former CVB, which was partially distributed to the new CVB, \$51,000 of which they still have. He anticipates \$51,000 to be in the fund and available to the CVB but he thinks a decision is going to have to be made about how that will continue to be funded moving forward.

CIP – 2020 Mid-Year CIP Change Update Earlier in the year staff issued a memorandum to Council notifying of various changes to CIP items that were going to be occurring until we could better assess the impact of the pandemic. At this time, we anticipate that our income tax revenues will be about where we originally anticipated and recommend reinstating some of those items that were put on hold, delayed, or reduced. We recommend reinstating the Building Improvement Program, Traffic Signal Improvement Program, and the Selby Park Playground Replacement with a partial reinstatement of servers and network.

When asked by Mr. Robinson if the Pingree crossing was included in the Traffic Signal Improvement Program, Mr. Bartter replied that the project is a separate item that will come out of the Bike & Pedestrian Fund allocation from 2019. That money has been allocated but it is separate. Mr. Robinson then asked if those funds will still be available next year. Mr. Bartter clarified

that they are available this year to move the project forward.

In looking at the revenue side, Mr. Robinson asked what assumptions were being made in the projections for the Anthem building, the potential mall redevelopment, and the former Holiday Inn site. Mr. Bartter replied that he did not make any assumptions for development or redevelopment projects. Last year we added a 5% increase because he was very confident that the Anthem building was going to be returned to its full production of income tax and that did not materialize. As he reflects on that decision, he does not think that it is the best practice. If any of those come to fruition, we can adjust but he did not project any increases in 2021. Mr. Robinson commented that Anthem specifically is zeroed out for the coming year. Mr. Bartter agreed. With Anthem, what the effect has been is that we have not seen any growth. We have been able to maintain income tax levels of 2017/2018 when they left but we just have not seen growth. If business returns there, and they generate \$1,000,000 in payroll taxes that would be all growth.

Mr. Greeson reported that staff will be talking about the CIP next week and can touch a little bit on the budget schedule but Mr. Bartter highlighted a few projects that we believe we can restore the funding to get those projects moving. Staff will plan to go over the "stalled" list of projects next week. It sounds like Mr. Robinson is interested in the Pingree crossing so we will be ready to discuss that next week as well.

Ms. Dorothy stated that she is also interested in knowing what projects are stalled because she would like many items to move forward. She does not have an issue with the items that were suggested but would still like to know what is stalled so members can make the decisions going forward. Mr. Greeson agreed to go back through the list that was provided back in May and highlight that.

Mr. Bartter acknowledged having the list. He shared that some of the items such as the community center pool resurfacing can't move forward in 2020 because there needs to be some down time at the pool so it will likely have to wait until 2021. Some of the things that we notified members of in the May 4th memorandum, we are just changing amounts due to updated cost estimates. The Police building HVAC and roof, we just provided updated cost estimates on those items as well as the Worthingway storm drainage. That is where we are. Mr. Greeson agreed to run through the list next week so that members have the information.

Mr. Greeson shared the budget schedule as follows: the CIP will be discussed during next week's meeting, the month of November we will have the departmental presentations and special groups with always the goal to adopt the budget at the first meeting in December.

When asked by Ms. Dorothy if the budget process information has gone out to the citizenry yet, Mr. Greeson replied that a column has been written and published online and in This Week that highlighted that budget season has arrived. People can get the information and we are encouraging people to participate. We have also been working on a tool called Balancing Act in which people can have an interactive experience by attempting to balance the budget themselves. We will be looking at the comments that we receive through that process and share them with council. Mr. Bartter explained that Balancing Act is a software where we upload both the CIP, and the proposed budget, we are working on that now, and residents will be able to provide feedback through this link. It will be interesting to see how much time people spend on that and what comments we receive. We have also issued the public notice that is required and that went out Friday for the hearings. We also have the scripts written and are producing four different budget and Finance videos. So those will hopefully be done by the end of the month. Mr. Myers referring to the CIP Fund Cash Flow on page 43 asked what the “blue” mean? Mr. Bartter replied that they are projects that will be funded through debt issuance.

Mr. Greeson thanked all the Department Directors, Ms. Stewart, and particularly Mr. Bartter’s team of Steve Gandee and Sarah Brickner who do a remarkable job. They put many hours into developing the documents that members will dive into in greater detail in the coming weeks so we will thank them at the beginning and then again at the end.

b. Financial Report - September

The Financial Report for the month of September is attached

Minutes:

Mr. Bartter reported that members have the September 2020 Financial Report. We did issue the notes as were discussed during a recent meeting, in an amount of \$5,815,000 to replace the 2019 Notes and fund building improvements at the Police building. Those were issued with an effective rate of 0.78%. He would be happy to answer any questions. If there are none, he would appreciate a motion to accept the report.

MOTION: Mr. Bucher moved, seconded by Ms. Kowalczyk a motion to accept the September 2020 Financial Report as presented.

The motion carried unanimously by a voice vote.

5. Discussion Item(s)

a. Sharon Township Fire Contract

Minutes:

Mr. Greeson reported that we are constantly trying to improve, and it is

important for us to periodically assess our charges for services. In this instance we provide Fire and EMS services to Sharon Township. We also provide similar services to Perry Township. We provide Police services to the Village of Riverlea as well as Fire and EMS Services through the Sharon Township Fire Contract. It is important to occasionally assess whether the cost of those services is being adequately charged to the recipient of them. We have not done that at all with the Sharon Township Fire agreement since its inception. Ms. Stewart is going to provide an overview of the current state of the Sharon Township agreement and at the end of it we will seek Council's authorization to initiate negotiations with Sharon Township on the cost of Fire and EMS Services. He added that we greatly value our relationship with the Township and enjoy working with the trustees, their staff and serving their citizens. It has been a long and valued partnership, but we do believe it is time to look closely at and renegotiate financial underpinnings of those services. He invited Ms. Stewart to share her presentation.

Ms. Stewart shared that Mr. Bartter in his presentation mentioned revenue for Fire Protection Services so that is comprised in part of revenue from Sharon Township for Fire and EMS services as well as through our contract with Perry Township for those same services. We have done an analysis and evaluation of the status of this contract and revenue that is received via this contract, so she wanted to share some of that information.

Some background is that prior to 1994 Worthington did not have a Division of Fire and EMS. That division resided with Sharon Township. In 1993, the City and the Township entered into an agreement for the Division of Fire to become part of the City. That official transition occurred on January 1, 1994. In preparation for that transfer, the City sought and received approval from the electorate for an increase in the income tax rate in 1993. That rate went from 1% to 1.65% with the primary purpose of bringing the Division of Fire into the City and operating it as a department. At the same time, the Township formed the Township Fire District, which also includes the Village of Riverlea, for paying for the contract between the Township and the City for fire services. At that point it was continuing a 6.00 mill property tax levy for Fire services and the 6.00 levy only had an effective rate of a little over 4 mills. Some inside millage levied by the Township also dropped off at that time. According to the current contract, which has been in place since the 1993/1994 timeframe, the City may only seek an increase in the amount to be paid by the Township Fire District if the City enacts additional property taxes or obtains the approval of its electorate for an income tax increase. The Township Fire District is only required to increase the amount it pays in an equitable proportion to the increase in taxes by the City, based on the

revenue realized by the City to fund the operations of the Division of Fire. Since the Division of Fire joined the City, the City has raised taxes three times: Income tax increased in 2004 and 2010 and Property tax in 2007. The Township Fire District Levy has not increased at all since 1994. The result is the Township Levy generates less today in actual dollars than it did in 1994 (1994, the levy generated \$147,796 and in 2019, the levy generated \$138,923) while the cost of providing Fire & EMS services has almost doubled.

We also looked at the percentage of runs in our service area, which includes the City of Worthington, Sharon Township, including the Village of Riverlea and Perry Township. Looking at all of those runs, Sharon Township comprises a little under 15% of all runs that were made in 2019. However, the revenue covers about 2% of the cost of the Division of Fire & EMS.

In looking at the Township's service area, there are some unique hazards which means that when incidents occur in those areas, they are very resource intensive. Those hazards include I-270 and SR-315, where accidents and incidents that occur on those freeways require several vehicles to respond and the Olentangy River which requires special equipment and numerous vehicles.

Finally, in our analysis we looked at what Sharon Township residents pay for fire service as compared to residents of other townships in the general area/region. Rates range from \$648.87 (Franklin Township) down to \$44.19 (Sharon Township) which is significantly less than what others pay for those same services. This analysis ultimately led to staff saying we really need to be having a conversation with Sharon Township about the cost of providing Fire & EMS services to them with an interest in receiving higher revenue recovery from Sharon Township.

Mr. Myers recalls that the City would first have to raise our taxes before we could make that request of the Township. Ms. Stewart agreed. The contract states that the City would first have to raise taxes before asking the Township to do so and the City has done that three times without the Township taxes increasing. Mr. Myers commented that the past increases would count as increases. Ms. Stewart replied that is her understanding. She invited Mr. Lindsey to comment as well. Mr. Lindsey concurred that the prior increases do fall within the contractual language. There is no language within the contract that expresses a time frame at which we need to request that increase by the Township so we believe that the three prior increases do support the City requesting the Township to seek a tax increase from its residents.

Mr. Myers reported that being his next question. The Township would have to raise the rate on their fire levy to pay for this. He asked if that was correct. Mr.

Greeson agreed.

When asked by Ms. Michael what the terms of the contract was in regarding to duration, Mr. Lindsey replied that it is essentially forever. The Township can terminate the contract however short of a breach, the City does not have that same ability.

Mr. Bucher asked if there have been any informal discussions as to where their thinking is on this request. Mr. Greeson shared that he has had a couple of conversations with Mr. Oberle to make him aware that we were conducting an analysis. He informed Mr. Oberle last week of tonight's presentation and shared that we would be seeking Council's authorization to enter negotiations. So that should not be a surprise, but we have not delved into the substance of the matter. We have not had an opportunity to answer any questions they may have regarding the analysis or had any discussions about what a fair compensation might be so all of that will be before us. He knows that it will require the placement of a tax increase on the ballot. It will be one that is sensitive and important to them.

Ms. Kowalczyk asked if the contract had any terms related to what will happen if we cannot get an increase. Mr. Greeson reported there being a mediation process if we cannot arrive at a conclusion at the table. In the event the voters do not approve, he would defer to Mr. Lindsey on how that would be dealt with. Mr. Lindsey replied that staff is still reviewing some of the details of that so he is not really prepared to speak specifically as to the options we would have legally in the event of either refusal to place a levy on the ballot or the public's refusal to approve the levy. That will be in part of our negotiation and then subject to whatever legal challenges that might be raised after that. Based on our review of the contract we have the right to request it and we will pursue assuming Council authorization.

Ms. Michael asked if this is something that staff would bring back and share in Executive Session since it is the discussion of a contract. Mr. Lindsey confirmed that we would either share in Executive Session or seek direction through Council leadership. Ms. Stewart added that staff will keep Council informed as to the status of the discussion.

MOTION: Mr. Smith moved, seconded by Mr. Myers a motion to authorize City staff to begin negotiations with Sharon Township regarding the Fire contract.
The motion carried unanimously by a voice vote.

Ms. Michael wished staff luck and asked that they keep Council posted.

b. In-Person Council Meetings

Minutes:

Mr. Greeson reported that the last time this item was brought up it was more

conceptual and not a written detailed plan. Subsequently we distributed to members a more detailed outline on how we would accomplish this in the event that members desire at some point to return to in-person or the legislature doesn't renew our authority to do that, which could come as early as December. He is not aware of any bill moving that would extend that December date.

Mr. Lindsey agreed that the special exception that was created by the General Assembly this spring expires on December 1st, which means at that point we would not be able to have virtual meetings without violating the Open Meetings law. The General Assembly, at least as of last week, had not introduced a recent bill addressing this issue. He did reach out to Gary Hunter, the general counsel for the Ohio Municipal League making sure that he is aware of the concern that both council members and staff have given the increasing in numbers, the lack of a vaccine, and the CDC's recent information about airborne transmissions. So, it is now in his court. He indicated an acknowledgement that we needed to get the exception extended and he will do what he can.

Mr. Greeson shared that the intent of this discussion item today is so we can be prepared in the event that we are required to return or if at some point council decides to return we want to have well thought out measures in place based on current health information that we are prepared to implement when it becomes needed. We are not advocating to return now and in talking with many of you, you are comfortable with our continued approach of doing this virtually. We did want to have a plan in place and Mr. Oliver who has been managing our logistics branch of our Incident Command structure and who is also our IT Director has put together a strategy and has modified it in the last few days based on the CDC guidelines and Columbus Public Health. He wants to particularly express some appreciation for Council member Kowalczyk who asked us several questions that we examined to help improve the plan that was previously drafted.

Mr. Oliver shared that the memo that was distributed a week ago, has been revised. We outlined some of the guidelines that will be in place for in-person council meetings. Screens will be strategically placed around the dais for all seven members of Council, Mr. Greeson and Ms. Thress. Likewise, there will be screens at the conference tables for Mr. Lindsey and any guest speaker as well as at the podium. Additional screens will be added as needed, wherever needed. We shared our plan with Columbus Public Health for this return including not having people wearing masks once they are seated. They advised that people continue wearing their masks even when seated and with the screens in place. We have done testing with the audio and feel we have a

set up that works well for allowing audio participation in the meeting. We since have found that will also allow video participation if we choose to facilitate that in some way.

He also shared that we have been assessing options for improving the HVAC with some sort of filtration system or system for monitoring and improving/regulating the humidity in the room. He is not ready to offer any solutions at this point, but we will continue to research that.

Ms. Kowalczyk, thanked him for looking into all of that considering some of the recent guidance from CDC and also hearing some of the things that the schools have been doing to improve conditions there. She is on the CAREs Committee and we are going to be talking about spending potential. She thinks these are things that if there is a price tag to ensuring that we can meet in person because of COVID that we could potentially use some of those dollars to pay for that. She does not know if they are thinking about particular things that might need to happen but we should keep that in mind.

Mr. Myers shared that he is anxious to get back and see everyone. He thinks that it is much easier to legislate when we are in person but particularly given the numbers from this weekend and with the holiday season coming up, he is scared that in January we will have another whole lockdown again. He does not see things improving. As much as he wants to get back to in-person, and he appreciates all the work that Mr. Oliver has done, he thinks at this point we just take a wait and see. He thinks Thanksgiving will be a big test. He believes our virtual meeting format will be well tested in the next couple of weeks with the pending applications at ARB. We are going to find out if we can get 1,000 people at a meeting and see if the system works past 1:00 a.m. He would like to revisit this again when we get closer to December.

Ms. Michael agreed to getting it back on the agenda. She thanked Mr. Oliver for all the hard work.

6. Information Item(s)

a. Architectural Review Board Appeal Process

Minutes:

Mr. Greeson reported that we will have an appeal over an ARB decision related to solar panels. Since we do not often handle appeals of the ARB, he thought it would be appropriate for Mr. Lindsey to provide an overview the appeal process.

Mr. Lindsey shared that staff felt this process was important to review with members especially since we do not do them often. He shared that Section 1177.08 provides for an appeal of a decision. (b) of that section states that Council may hold a hearing on the appeal by the affirmative vote of a majority

of its members or failing to so elect, shall reject the application for appeal. So, it is a discretion appeal. It is not an appeal of right that anyone has in terms of that appeal being heard by City Council. It is therefore a process by which Council decides if it wants to hear the appeal. If Council decides to hear the appeal, then it will hold a public hearing and that hearing must be done within 60 days of the final decision of the Board. A final decision from a legal standpoint is usually based on the signing of a Board order or the approval of minutes of an oral decision at a Board hearing. So the clock doesn't start immediately in terms of when you have to have the public hearing if Council were to decide to grant that request for an appeal. This is the Code that we have, and it does not provide any specific guidance on how Council should consider that view.

Mr. Lindsey then shared a couple of things he felt was important in members consideration of this request. He stated that the closest analogy that we find to this sort of discretionary appeal comes from the Ohio Supreme Court and the U.S. Supreme Court. Both have discretionary review of appeal. Not every case decided by a Court of Appeals decided at the State or Federal level has a right to be heard by the Supreme Court. There are a couple of direct right to appeal to the Ohio Supreme Court but in general a discretionary review is based on does the case have a question of great general or public interest. It is not just that there might have been a mistake made or judgement call. It is whether the case involves a question of great general or public interest. The U.S. Supreme Court has a variety of ways that a case gets heard but the most relevant that might be considered comparable to our situation is whether the court of appeals and the language of the rule, is so far departed from the accepted or usual course of judicial proceedings as to warrant that the Court taking a supervisory role by hearing that case. In this case if the ARB were to not hold the due process type hearings that they routinely hold and therefore council felt that the applicant was deprived of a proper hearing then he supposes that might be the analogy that would prompt Council to consider hearing the appeal.

Mr. Lindsey shared two additional ways to get an appeal heard by the U.S. Supreme Court as well as analogies of both pursuant to this situation. This information is a sort of the rough standard that has been used in the past. Staff wanted to share this tonight so that council is familiar with the process, has a chance to either ask questions tonight or at least consider this in advance of receiving the appeal that is anticipated, possibly the early part of November. He would be happy to answer any questions. Mr. Myers commented that because it was a denial of a certificate, there would be no order that would come out of ARB so the date would be the adoption of the

minutes? Mr. Lindsey agreed. Mr. Myers stated that has not occurred yet. Mr. Lindsey again confirmed that as of last week, staff was still working on getting those minutes prepared for the Board to review. Mr. Brown could provide additional information.

Mr. Brown reported that minutes were approved last week so they have all the information ready to go for the Council October 19th agenda to have the discussion to have a hearing. We did not think the minutes were going to get done but they were able to be completed the day before the meeting and were sent out to the Board. Mr. Lindsey commented that Mr. Brown is too efficient so if Council decides to have a hearing, we will need to have that hearing in December. Mr. Myers commented that was the one meeting that he has missed this year.

Mr. Myers remarked that this item will be on the agenda for next week. Ms. Michael agreed.

Ms. Kowalczyk asked if members could talk about the standard of review again. She does not know that is helpful for a lay person to understand what Council is going to be looking at in order to make a decision in terms of whether to hear an appeal. She asked Mr. Lindsey if he could restate his comments so that it makes sense to a lay person.

Mr. Lindsey apologized for being overly lawyer like in his explanations. The sort of standard by which council decides things, that was the purpose of his initial discussion there. He supposes the piece that he failed to include is what would council be considering for applying that standard to. At least historically, that has included the minutes of the ARB hearing so that members can have the benefit of what the ARB had, it would also include a staff memo explaining the issue that was before the ARB and any of the relevant facts that were presented at that hearing including any relevant code sections that would apply. Members would have all of that information as well as the notice of appeal that will be filed by the person requesting that the appeal be heard. You will not have a hearing in the form of the applicant testifying or the owners testifying so it is sort of a review based on what did the lower court decide and what information was before it and just the overview of the code sections. Ms. Michael interjected that if she is not mistaken, it will also include precedent on the topic, what has been ruled or determined in the past, in this case, the installation of solar panels in the Historic Area. Mr. Lindsey believes that the staff memo would include that sort of background, in this case where there is some relevant history precedent that would have been involved.

Ms. Kowalczyk concluded that members are not looking at all of the facts being brought before us fresh but rather looking at the record and trying to

decide based on the decision made by the ARB whether members need to take it on appeal and consider the decision that should have been made. We are looking at that because of the things that Mr. Lindsey outlined. Because the decision does not meet what is in the code that has been set forth or because we see great special interest in the issue. She asked if that is accurate? Is she stating it correctly? Mr. Lindsey thinks that is correct. He thinks there has been at least one of these that he has handled in the past three years where council discussed whether to have the hearing or not on the same night. He understands that prior to that, this has always been sort of the challenge to go about it in a way that does not result in holding the hearing itself. Courts, particularly Supreme Courts, are used to doing this in a way where they are looking at should they hear the appeal and not the merits of the case. The Ohio Supreme Court and the U.S. Supreme Court hold briefings of the case twice. There is the explanation of why they should hear your case or the opponent arguing why the court should not hear the case. Then if the court takes the case, then it is really the briefing on the merits, which is much more extensive. It would include much more details from the record and so that is the process that he believes is most like what Council, in the adoption of this ordinance, had established. Because this is by ordinance and not by charter, it is certainly the prerogative of Council, if interested, to look at clarifying that process within the code itself. Most cities to the extent that he is aware, are all or nothing. You are either granting a review by Council or you are leaving people to pursue their appeal in civil court. We have a hybrid that says council may decide to hear it, but they are not required to. When asked by Ms. Kowalczyk what the process is if Council decides not to hear the case, Mr. Lindsey replied that if council were to not hear it, he doesn't rule out that a party would have the ability to seek administrative review in the courts at that point in time. He added that the code provides that if you do have the hearing, council's decision should be final. The statement that the decision is final, if it is an administrative type hearing will then trigger the administrative review under state code.

Mr. Myers shared that this will be his third appeal and he has some very definite ideas about this. As we would say, an appellate court is not a court of error, it is a court of law and we are not sitting to correct what we think is a mistake. As he said at the ARB meeting when this was decided he personally thinks under our current guidelines, ARB's decision was probably correct, but it is the issue of two competing priorities in Worthington. You have the architectural integrity of the district and the goal of sustainability as expressed through solar panels. He believes four years ago that council passed the amendments to the Design Guidelines which was a compromise

after months of deliberation and input. So, he thinks the question is whether Council wants to revisit that. We do have precedent that we would be commenting on. To him that is really the issue here. It is not whether the ARB got this right or wrong, it is has Council changed its position on what the Design Guidelines say.

Ms. Kowalczyk stated that she understands that she is just trying to understand the process for the appellant and what we are deciding for them. If that is in our purview as part of that discussion, if we are looking at a policy discussion in terms of their case or do, we have to take those in steps. She is trying to understand how all of that would work. Because one may be one answer and then the policy decision could be a whole other issue.

Mr. Lindsey commented that under the Ohio Supreme Court rule, the couple that he did not include relate to felonies which have two standards of review for the Supreme Court so he would like to throw those out. There is also an interesting one that doesn't really fit with how the rule is laid out in terms of the court making their decision but it does include a catch all for the Supreme Court to take other appropriate action. So, the court might, in some instance, not hear the appeal but take some other action. In that regard he would suppose council might decide that ARB did its job according to the code as written and therefore not need to hear the appeal but may choose to take up the issue of whether or not there needs to be a code amendment that reflects some balancing of some consideration as Council member Myers referred to. That would certainly be another option. He would be of the view that that would be a separate action taken and not being done as part of the hearing of the appeal. Therefore, the question of whether the applicant might under revise code pursue that option again.

President Michael remarked that next week Mr. Lindsey will have a very succinct summary of what members need to be looking at as they decide whether to hear the appeal and it will be part of their council packet. She thinks that would be helpful for members. Mr. Lindsey agreed that Mr. Brown would provide something on the issue that is being presented and he will provide some of the information and standard that he spoke of earlier.

b. Other

Minutes:

Mr. Greeson reported that somebody noted earlier the uptick in Coronavirus cases this weekend. We put out some information because of the epidemiological reports that the Columbus Public Health provides us and the number of cases in Worthington when we reported on Saturday had risen by 15 in the past week. Previously most of those cases were in long-term care

facilities, but that is not the case here. This increase number of cases are mainly due to spread in the community at-large. We wanted to alert members to that and point you to the information that we put out that encourages people to remain vigilant in their efforts to battle covid-19 by maintaining social distancing, wearing masks, washing hands and all of the good practices we now know are important. He would be glad to answer any questions members may have. He thinks the total number of cases confirmed or probable in Worthington as of today are 310.

When asked by Ms. Dorothy if the 310 was in a week or total since the beginning, Mr. Greeson replied that it is total, but we have increased by 15 in the past week. Ms. Dorothy stated that 15 community spread in the past week and we know it can spread quickly if we are not careful. Mr. Greeson agreed.

Ms. Michael shared that Mr. Robinson texted her to say that he was not feeling well and needed to drop off the call. She knows that Mr. Greeson was going to call on him, so she wanted to let him know. Mr. Greeson stated that we can probably touch on some of the things that he was interested in talking about next week.

Mr. Greeson commented that he wanted to point out a few of our Diversity, Equity, and Inclusion efforts that we are working on, some in collaboration with community partners. First, the Community Relations Commission has sponsored a virtual program on the making of metropolitan inequity on August 22nd. They have also been partnering with the Worthington Libraries who will be piloting a learning circles program to focus on racial equity topics starting in October. This will be a twenty-one day racial justice and social equity series where participants will spend time each day reading articles and watching videos about issues related to voting, education, criminal justice reform, public health and then they will have weekly zoom discussion groups with participants being lead by library staff. He believes each group will be limited to fifteen participants. The study materials for the twenty-one-day challenge will be available for anyone but the groups will be limited. If it is successful, they may repeat it. Additionally, he noted that several members of the CRC have been gathering research materials on issues like source of income legislation that they may share with staff and council in the coming weeks.

He will be setting up some opportunities to brief members on some of the work that we have done with Mr. White in the coming week or so. Much of this is consistent with his thoughts about trying to provide opportunities for community education. Additionally, we have formed our Diversity Equity and Inclusion committee internal to the organization. Mr. Oliver and Ms. Trego are

leading that effort. He is pleased to report that there are now 14 members of our organization who have volunteered to be part of that. If you go back to your budget slide, and remember how many full-time employees that is, that is over ten percent of our employees who have volunteered to work on these issues from across our departments and organization and we are really excited about that. They are really in their formation stage, working on mission and developing their capacity to look at training and other issues. Lastly, we have been spending a lot of time working to support some of the efforts Council members Kowalczyk, Myers, and Robinson have been looking at related to police issues. He planned to provide an opportunity for them to brief council on those efforts, but it may be more appropriate to delay that to a subsequent meeting, but he will defer to Ms. Kowalczyk and Mr. Myers on that.

Ms. Kowalczyk shared that she is aware that Mr. Robinson had a bit more to say based on some of the things that he is specifically initiating. She and Mr. Robinson met recently with some of the protestors to hear some of their thoughts and take their feedback and she can share what they are working on with them and then they had the opportunity this morning with Mr. Myers, Mr. Greeson and Chief Ware to meet with officers to hear their feedback and what their experience has been. She appreciates very much hearing from all the stakeholders, particularly the police officers in the context of this discussion. They are gathering information and have some ideas. Two things that she is most interested in trying to get a handle on is data as a source of monitoring, accountability, and transparency. In terms of looking at racial equity type data, where it does not seem to be much nationally that has been formally initiated. She knows there has only been recent requirements on that here in Ohio and with our police department so that is something that she is interested in looking at as we move forward.

Additionally, she has mentioned this before but looking at how we really prioritize social service interventions in a more formal way. She thinks we have great connections with our community organizations but trying to understand if there is more that we can do to support the officers in the field dealing with these noncriminal situations. There are things that can result in more difficult interactions and then also just connecting people to services they need in terms of health and older adults in the community. Those are things she is interested in continuing to pursue. It seems that they are worthwhile. But she knows Mr. Robinson has a few things and she will let him share his. Mr. Myers has been fantastic in sharing his expertise and thoughts on these issues as well.

When asked by Ms. Michael if he had anything he wanted to share, Mr. Myers replied no other than Mr. Robinson has made some fairly concrete proposals in writing and he hopes that we can get to that fairly soon because he thinks that it brings out some pretty core issues. He thinks it is some things that council really needs to discuss. They went a long way in discussing some of those issues that morning, but he thinks the group needs to have a robust discussion about what we want to do next.

President Michael said we will look at adding the topic to an upcoming agenda. Mr. Greeson added that we will continue working with them to help frame and shape that information and at the appropriate time getting it to council members.

Reports of Council Members

7. Council Reports

Minutes:

Ms. Dorothy thanked Mr. Whited and his team for at least two new pedestrian intervals in Worthington. She does not know how many there are, but she saw them at High St. and Selby. Mr. Greeson reported that Mr. Whited was not able to be on this evening, but he will pass her delight on to him. Maybe he can provide an update next time on how many we have and what our plans are because our goal is to put as many of those as possible in so that it assists with safe crossings. Ms. Dorothy added that she appreciates the Bike and Ped Committee and their outdoor biking group this past week and the support from all the staff that helped lead that event too. She just wanted to acknowledge that also.

Mr. Smith thinks it is important that we have some sort of conversation about the UMCH proposal because we already had the conversation five years ago and sent clear messages to that organization and the applicant. He does not know if that would be appropriate tonight or next week, but he thinks it is very, very important to give some direction to our Boards.

Mr. Bucher shared that he wanted to briefly touch on the mail ballots that were incorrect in the county. The Franklin County Board of Election reported just under 50,000 were incorrect including the two at his house. He just wanted to make sure that information was out there. Those who received the wrong ballot should be receiving a new one any day or you can go to the early vote center at the Board of Elections and vote before Election Day or you can vote provisionally at your polling place on Election Day. He just wanted to make sure that got out there as much as possible. President Michael thanked him for the update.

Other

Executive Session

Adjournment

8. Motion to Adjourn

Minutes:

MOTION: Mr. Myers moved, Mr. Smith seconded a motion to adjourn.

The motion passed unanimously by a voice vote.

President Michael adjourned the meeting at 9:10 p.m.

Contact: D. Kay Thress, Clerk of Council (Kay.Thress@worthington.org 614-436-3100) | Minutes published on 10/29/2020, adopted on 11/02/2020

/s/ D. Kay Thress
Clerk of Council

/s/ Bonnie D. Michael
Council President