

**VILLAGE OF COMMERCIAL POINT  
COUNCIL MEETING MINUTES  
October 1, 2012**

Mayor Hammond called the meeting to order followed by the Pledge of Allegiance. Mayor Hammond asked for a Moment of Silence to honor our Men and Women; Past and Present; for their Military Service to our Country. Ms. Gooden-Kinney took roll call with the following members of Council present: Mr. Kuzelka, Mr. Cruz, Mr. Thompson, Mr. Shelton and Ms. Gooden-Kinney. Solicitor Crites and Engineer Grosse were also in attendance. Mr. Wissinger and Fiscal Officer Hastings were absent.

Mr. Thompson made a motion, seconded by Mr. Kuzelka to approve the September 10, 2012 Regular Council Meeting Minutes. All members were in favor with the exception of Mr. Shelton who abstained. The motion passed.

At this time, Mr. Cruz made a motion, seconded by Mr. Shelton to move the discussion on the zoning variance for 133 Foxfire Blvd to this part of the meeting. A roll call vote was taken: Mr. Cruz – Yes, Mr. Thompson – Yes, Mr. Kuzelka – Yes, Ms. Gooden-Kinney – Yes, Mr. Shelton – Yes. The motion passed.

At this time, Mayor Hammond left the Council Table due to conflict of interest. Solicitor Crites handed Council a document for their review and to help them make a decision on the variance request from Mr. Rings. This document consisted of four variance criteria points per the Ordinances of Commercial Point, the seven Duncan Factors, which are an additional set of standards set forth by the Ohio Supreme Court, and three other factors that need to be considered when making a decision on any variance request. Each factor was discussed individually with a decision made on each point. Solicitor Crites pointed out there are two types of variances, one being use and one being area. This particular request is an area variance and the applicable standard is “practical difficulty”.

**Commercial Point Variance Criteria:**

- 1)** The granting of the variance will not be detrimental to the public safety, health or wealth or injurious to other property. After a brief discussion, Council felt this was a true statement.
- 2)** The conditions upon which the request for variance is based are unique to the property for which the variance is sought and not applicable to other property. After a brief discussion, 3 members of Council felt this was a true statement and 2 members of Council felt this was a false statement.
- 3)** Because of the particular physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the owner would result as distinguished from a mere inconvenience, if the strict letter of these regulations are carried out. After a brief discussion, Council felt this was a false statement.
- 4)** Variances contrary to other applicable guidelines and ordinances shall not be granted. Council felt this was non-applicable to this variance.

**Duncan Factors**

- 1A)** Whether the property will yield a reasonable return without a variance; or. After a brief discussion, Council felt this was a true statement.
- 1B)** Whether there can be a beneficial use of the property without a variance. After a brief discussion, Council felt this was a true statement.
- 2)** Whether the variance is substantial. After a brief discussion, Council felt this was a true statement.
- 3A)** Whether the essential character of the neighborhood would be substantially altered as a result of the variance. After a brief discussion, 1 member of Council said this was a true statement, 3 members of Council said this was a false statement, and 1 member of Council abstained from a decision.
- 3B)** Whether adjoining properties would suffer a substantial detriment as the result of a variance. After a brief discussion, Council felt this was a false statement.
- 4)** Whether the variance would adversely affect the delivery of governmental services. After a brief discussion, Council felt this was a false statement.
- 5)** Whether the property owner purchased the property with knowledge of the zoning restrictions. After a brief discussion, Council felt this was a true statement.
- 6)** Whether the problem can be solved through some other manner other than granting a variance. After a brief discussion, Council felt this was a true statement.
- 7)** Whether the spirit and intent behind the zoning requirements would be required to be observed and substantial justice done by granting the variance. After a brief discussion, Council felt this was a true statement.

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Other Factors Considered

- 1) Does not impact or diminish established property values within surrounding areas. After a brief discussion, Council felt this was a true statement.
- 2) Does not unreasonably increase congestion in public streets. Council felt this was non-applicable to this variance.
- 3) Does not impact an adequate supply of light and air to adjacent properties. Council felt this was non-applicable to this variance.

At this time, Solicitor Crites recapped all of the results from each factor. He will bring back to Council a "Findings of Facts" in the form of a Resolution. The next step for Council would be to make a motion to accept or deny the variance which would then inform Solicitor Crites what type of resolution to prepare.

Mr. Shelton made a motion to approve the variance request based on the factors and the applicant's testimony. Motion failed due to lack of a second. Mr. Cruz made a motion, seconded by Mr. Thompson to deny the variance request. Mr. Kuzelka said if he lived in the area, would he want to look at a building this size. Solicitor Crites reminded Council that the only thing that needs a decision is to allow an additional 13 feet in height for an accessory building. The looks, location, color etc., are not in question. Mr. Thompson feels other people in the Village wanted to building buildings higher than the 15 feet limit and were told the application would be denied and they would need to come to Council to file a variance request. Mr. Cruz feels Mr. Rings built on this property knowing the zoning restrictions. He feels other alternatives are available. Mr. Shelton referenced back to # 3 of the Duncan Factors and feels the requested height of the accessory building would not alter the neighborhood. He feels it is a separate area, not in a subdivision and not detrimental to the public safety, health or wealth. There was no further discussion so a roll call vote was taken. The results: Mr. Shelton – No, Ms. Gooden-Kinney – No, Mr. Kuzelka – Yes, Mr. Thompson – Yes, Mr. Cruz – Yes. The motion passed to deny the variance. At this time, Solicitor Crites said he would prepare a resolution for Council based on the outcome of this motion.

Mayor Hammond rejoined the Council table.

Administrative Reports:

- A. Mayor's Report – See attached
- B. Village Engineer's Report – Nothing to report
- C. Village Solicitor's Report – Solicitor Crites said the Deed for the Walker Point walk path has been delivered to Mr. Mike Struckman, Scioto Township Trustee. Solicitor Crites and Engineer Grosse will need to get together and discuss whether a lot split is needed for this piece of property. Mr. Cruz asked Mr. Struckman if he needed a Village Representative at the next township meeting. Mr. Struckman said he didn't think so, but all of Council is always welcomed at the township meetings. He will have their attorney look at the document.
- D. Police Department Report - On file
- E. Fiscal Officer's Report – No report
- F. Plant Superintendent's Report – No report

Legislative Reports

- A. Legislative Authority Reports
  1. Vidal Cruz – Nothing to report
  2. Jim Kuzelka – Nothing to report
  3. Kimberly Gooden-Kinney – Nothing to report
  4. Jason Thompson – Nothing to report
  5. Randy Shelton – Nothing to report
  6. Clarence Wissinger - Absent

Committee Action:

- A. Utility Committee – Meeting scheduled for October 8, 2012 at 7:00 p.m.
- B. Street Committee – Meeting scheduled for October 8, 2012 at 7:00 p.m.
- C. Safety Committee – Nothing to report
- D. Finance Committee – Nothing to report
- E. Zoning Committee – Meeting scheduled for October 15, 2012 at 6:00 p.m.

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At this time, Robert Radcliff, Pickaway County Sheriff candidate, spoke to Council about why he feels he would be a good choice for Sheriff. He has 32 years of experience in Pickaway County. He has worked in the crime lab, correction division and administration. He is endorsed by many people in Pickaway County. He said 40% of the General Fund budget for Pickaway County is allocated to the Sheriff's office.

Ms. Paula Kuzelka asked if there were any changes to the water. She reported that she has "pink" water in her toilets. She mentioned that she had asked a person on Council, but he told her he wasn't allowed to question the water quality. Ms. Gooden-Kinney asked if there was a water softener in the home. Ms. Kuzelka said yes. Mayor Hammond said the Water Plant has had some issues over the last several months, but this was the first time he has heard of "pink" water. There have been adjustments made to the softness of the water which might have disturbed some of the sediments in the piping causing discolored water. Engineer Grosse said having "pink" water is a different issue. He would like to take samples of this water and have it tested. Mr. Kuzelka said samples have been taken from other properties in that area, however no results have been issued.

Mr. Gary Joiner of Chestnut Estates thanked Council for their attention to his complaint about stagnant water in the new pond at Chestnut Estates. The fountain is working and moving the water.

Mr. David Sadler of Chestnut Estates asked if anything had been done with the JEDD. He hasn't heard anything for a while. Solicitor Crites said the contract is still being negotiated. Once completed, there will be meetings held that will be open to the public.

Mr. Paul Rings asked what his next step is on his variance request. Solicitor Crites said the Council will be voting on the Resolution that he is going to prepare. Once the Resolution is passed, Mr. Rings will have 30 days to file an appeal with the Pickaway County Common Plea Court.

**Legislative: First Reading**

**Ordinance 2012-10 AN ORDINANCE PROVIDING FOR ADJUSTMENTS OF THE ANNUAL BUDGET FOR THE FISCAL YEAR 2012 AND RATIFYING THE TRANSFER OF MONIES WITHIN THE SEWER FUND FROM ACCOUNT 5201-549-590 (CAPITAL OUTLAY) TO ACCOUNT 5201-549-190-1010 (SALARY-PLANT OPERATOR 50%)** Mr. Kuzelka made a motion, seconded by Mr. Shelton to waive the three readings. A roll call vote was taken: Mr. Kuzelka – Yes, Ms. Gooden-Kinney – Yes, Mr. Cruz – Yes, Mr. Shelton – Yes, Mr. Thompson – Yes. The motion passed. Mr. Cruz made a motion, seconded by Mr. Thompson to approve Ordinance 2012-10. A roll call vote was taken: : Mr. Kuzelka – Yes, Ms. Gooden-Kinney – Yes, Mr. Cruz – Yes, Mr. Shelton – Yes, Mr. Thompson – Yes. The motion passed.

**Ordinance 2012-11 AN ORDINANCE PROVIDING FOR ADJUSTMENTS OF THE ANNUAL BUDGET FOR THE FISCAL YEAR 2012 AND RATIFYING THE TRANSFER OF MONIES WITHIN THE WATER FUND FROM ACCOUNT 5101-539-590 (CAPITAL OUTLAY) TO ACCOUNT 5101-539-190-1010 (SALARY-PLANT OPERATOR 50%)** Mr. Cruz made a motion, seconded by Mr. Thompson to waive the three readings. A roll call vote was taken: Mr. Kuzelka – Yes, Ms. Gooden-Kinney – Yes, Mr. Cruz – Yes, Mr. Shelton – Yes, Mr. Thompson – Yes. The motion passed. Mr. Shelton made a motion, seconded by Ms. Gooden-Kinney to approve Ordinance 2012-11. A roll call vote was taken: : Mr. Kuzelka – Yes, Ms. Gooden-Kinney – Yes, Mr. Cruz – Yes, Mr. Shelton – Yes, Mr. Thompson – Yes. The motion passed.

**Ordinance 2012-12 - AN ORDINANCE TO PROVIDE FOR ADJUSTMENTS OF THE ANNUAL BUDGET FOR THE FISCAL YEAR 2012 AND TO REALIGN MONIES WITHIN THE GENERAL FUND FROM ACCOUNT 1000-910-910 (TRANSFERS OUT) TO ACCOUNT 1000-715-341 (ACCOUNTING AND LEGAL FEES).** Mr. Kuzelka made a motion, seconded by Mr. Cruz to waive the three readings. Mr. Shelton asked why Council had spent as much as they did year to date. Mayor Hammond said extra time and money were spent on the Go-Kart contract, training of new Council and Mayor and the JEDD. A roll call vote was taken: Mr. Kuzelka – Yes, Ms. Gooden-Kinney – Yes, Mr. Cruz – Yes, Mr. Shelton – Yes, Mr. Thompson – Yes. The motion passed. Mr. Cruz made a motion, seconded by Mr. Kuzelka to approve Ordinance 2012-12. A roll call vote was taken: : Mr. Kuzelka – Yes, Ms. Gooden-Kinney – Yes, Mr. Cruz – Yes, Mr. Shelton – Yes, Mr. Thompson – Yes. The motion passed.

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Ordinance 2012-13 – AN ORDINANCE TO PROVIDE FOR ADJUSTMENTS OF THE ANNUAL BUDGET FOR THE FISCAL YEAR 2012 AND TO REALIGN MONIES WITHIN THE GENERAL FUND FROM ACCOUNT 1000-910-910 (TRANSFERS OUT) TO ACCOUNT 1000-725-121 (FISCAL OFFICER) Mr. Shelton made a motion, seconded by Mr. Thompson to waive the three readings. A roll call vote was taken: Mr. Kuzelka – Yes, Ms. Gooden-Kinney – Yes, Mr. Cruz – Yes, Mr. Shelton – Yes, Mr. Thompson – Yes. The motion passed. Mr. Shelton made a motion, seconded by Mr. Cruz to approve Ordinance 2012-13. A roll call vote was taken: : Mr. Kuzelka – Yes, Ms. Gooden-Kinney – Yes, Mr. Cruz – Yes, Mr. Shelton – Yes, Mr. Thompson – Yes. The motion passed.

**Legislative: Second Reading**

Resolution 08-2012 A RESOLUTION TO REALIGN MONIES WITHIN THE GENERAL FUND FROM THE MACHINERY, EQUIPMENT AND FURNITURE FUND 1000-710-540 AND TRANSFER SAID MONIES TO THE CLEANING, MAINTENANCE AND REPAIR OF BUILDING FUND 1000-710-431. Mr. Kuzelka made a motion, seconded by Mr. Shelton to waive the three readings. A roll call vote was taken: Mr. Kuzelka – Yes, Ms. Gooden-Kinney – No, Mr. Cruz – No, Mr. Shelton – Yes, Mr. Thompson – Yes. The motion failed

At this time, Mr. Kuzelka handed out his Letter of Resignation to all of Council. His resignation is to take effect immediately. He wished everyone success.

Mr. Thompson asked if the flush hydrant in Walker Point was working. Engineer Grosse said the timer is not working and he will have Superintendent Thompson take a look at it and get it fixed. Mr. Thompson also asked for an update on the Walker Point walk path. Engineer Grosse said prices are coming in, He will make his recommendation to Council soon.

Mr. Thompson made a motion, seconded by Mr. Shelton to adjourn the meeting. All members were in favor. The meeting adjourned.

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Joe Hammond, Mayor

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Wendy L. Hastings, Fiscal Officer