

MADEIRA CITY COUNCIL
REGULAR MEETING MINUTES
AUGUST 12, 2019

I. CALL TO ORDER

The meeting was called to order by Mayor Theis at 7:30 p.m.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The Invocation and Pledge of Allegiance were led by Mayor Theis.

III. ROLL CALL

Members present:

Traci Theis, Mayor
Melisa Adrien
Scott Gehring
Chris Hilberg
Doug Moormann
Brian Mueller
Nancy Spencer

Officials/Staff present:

Brian Fox, Law Director
Tom Moeller, City Manager
Lori A. Thompson, Assistant City Manager
David Schaefer, Police Chief
Christine Doyle, Clerk of Council

Officials/Staff not present:

Steve Soper, Treasurer
Kristie Lowndes, Tax Commissioner

IV. ACCEPTANCE OF THE AGENDA AND MINUTES

1. Changes to the agenda:

- Mr. Hilberg asked to add a possible citywide shred day to New Business.

2. Changes to the City Council Special Meeting minutes from July 11, 2019:

- None

3. Changes to the City Council Regular Meeting minutes from July 22, 2019:

- None

Motion to accept the amended agenda and the July 11 and July 22, 2019 minutes made by Mr. Gehring, second by Mr. Moormann. Motion passed by unanimous roll call vote.

V. MAYOR'S MOMENT

1. Public Comment Reminder

2. Mayor's Moment

- Mayor Theis spoke on Summer Ending/Back to School. The Street Dance was well attended and both Chief Oughterson and Chief Schaefer spent some time in the dunking booth. The Parks Board took credit card payments for the first time. School starts this week and motorists were asked to be aware of school busses and school zone speed limits.
- Madeira High School student Caty McNally was the youngest person competing at this year's Western & Southern Open tennis tournament.
- The Oyler Group held an event for their new homeowners to give children new to Madeira a chance to meet other kids before school starts.
- Joel Miller attended the meeting to earn his Communications Merit Badge for Boy Scouts.

3. Special Recognition
 - None

VI. INVITED GUESTS

1. Fire Chief Steve Oughterson addressed City Council to formally introduce himself and provide a brief summary on his first month on the job. He said the transition has been seamless and added there would be a variety of events to honor retiring Chief Ashbrock.
 - The concrete work at the Madeira firehouse would continue until about October, as 52% of the outside concrete is being replaced by the contractor. The work is being done at the cost of the contractor as the original installation was not satisfactory.
 - Staffing of the firehouses is improving, as they have eight firefighters on staff with regularity.

VII. NOTICES OF OTHER MEETINGS AND EVENTS

- | | |
|--------------------------------|----------------------------|
| • Parks and Recreation Board | August 14, 2019, 7:00 p.m. |
| • Planning Commission | August 19, 2019, 7:00 p.m. |
| • Mayor's Court | August 21, 2019, 6:30 p.m. |
| • Budget and Finance Committee | August 26, 2019, 6:30 p.m. |
| • City Council | August 26, 2019, 7:30 p.m. |

VIII. COMMITTEE AND OFFICIAL REPORTS

1. Budget and Finance Committee meeting on July 30, 2019
 - Ms. Spencer reported the Committee reviewed the monthly financials and noted they are tracking on budget with earnings tax revenue up slightly.
 - Misconceptions about the cash transaction report were discussed. Ms. Spencer said the report appears flush with cash just like a personal bank account would after the person receives a paycheck; however, like the personal account, the cash is used to write checks for bills.
 - The Committee reviewed the road and Indian Hill waterline work that must be done over the two years required if it is decided to transition out of the Indian Hill contract. They determined the waterline work cannot get done in conjunction with the road replacement without an additional surcharge to IHWW customers. The Committee will also look into a competitive grant that would allow the City to take out a no-interest loan for the work.
2. Economic Development Committee meeting on August 12, 2019
 - Mr. Moormann reported Sycamore Township is open to working with the City on ways to efficiently and intentionally promote available property in the JEDZ. The Committee will ask the Madeira Chamber of Commerce to join in the discussions as well. Any promotion would be done with existing resources.
 - Regarding leases for City-owned property, the current tenant of the depot is unlikely to renew the lease, and a few potential end users have expressed interest but would require a hood system for cooking. The Committee asked the Administration to put together a policy and an MOU (memorandum of understanding) that would state terms for a potential lease and ask potential new tenants to invest in tenant improvements. The Committee asked that a draft policy be available at the next Council meeting. The Administration was also asked to send a letter to Creativities to ask if they intend to renew their lease, as it is up at the end of October.

3. Board of Zoning Appeals meeting on August 5, 2019

- Mr. Moeller said there were four hearings on the agenda.
 - A front yard variance to build a garage on an existing lot was approved for 7130 Shawnee Run.
 - A side yard variance for a fence at 7701 Greenbriar was approved.
 - A variance for lot coverage percentage for a home at 7108 Mayfield was approved.
 - A variance for a sign in the right-of-way was approved for 7713 Camargo Road.

IX. COMMUNITY PARTICIPATION

1. Guests and Registered Visitors

- Doug Oppenheimer, 7431 Mar Del, said there is a committee preparing petitions that would subject Ordinance No. 19-01 to referendum. He asked Mr. Fox what election date should be put on the petition; Mr. Fox said what Mr. Oppenheimer was describing was too hypothetical for him to provide a direct answer. Mr. Oppenheimer handed a letter from George Parker regarding the referendum to the Clerk of Council. Mr. Moormann asked why Mr. Oppenheimer would choose to referendum a non-binding ordinance that is required by the Charter. Mr. Oppenheimer said he has found no mention of a “comprehensive” plan in the Charter; Mr. Moormann asked if he would referendum a “general” plan. Mr. Oppenheimer suggested Mr. Moormann talk to someone on the committee.
- Claudia Harrod, 6809 Marvin, said her remarks at the last Council meeting were not properly represented in the meeting minutes. She said she did not share thoughts, she asked questions. She read ten questions regarding the Housing section of the Comprehensive Plan and asked Council to respond. See list attached. Mr. Mueller said the Plan does not recommend changing the zoning code in regard to higher density. Mr. Moormann said there may have been people from the real estate community on the Housing Working Group but not developers.
- Barbara Holwadel, 6022 Cherokee Drive, relayed events that took place before and after she announced her bid for Council that she found disrespectful. She referenced Mr. Mueller’s website and his election guide, saying she was not affiliated with the women for liberty group he cited; she added she is affiliated with Ohio Women for Liberty. She said she was also not asked for any information about her background to include on the site. She expressed great concern about Mr. Mueller having an election guide as an elected official. Mr. Mueller responded he respects Ms. Holwadel’s right to run for office but asks that she do so within the confines of the law. Ms. Holwadel asked Mr. Mueller to stop implying things without facts.

2. Correspondence

- None

X. ORDINANCES AND RESOLUTIONS

1. Ord. No. 19-01: Adoption of the Comprehensive Plan—Third Reading

- Motion to approve Ordinance 19-01 made by Mr. Hilberg, second by Mr. Moormann.
- Mr. Hilberg asked Mayor Theis to read Section 4 of Ordinance 19-01: “That the Madeira City Council, in enacting this Ordinance 19-01, is not taking any action to incorporate the Madeira Comprehensive Plan (nor any of the recommendations outlined therein) into the City of Madeira Zoning Code, and, as such, the Madeira Comprehensive Plan shall not be independently legally binding upon the use of property or density and character of development within the City of Madeira.”

- Ms. Adrien said the process started about four years ago, when the Planning Commission at the time wanted to fulfill the Charter requirement and have the residents enjoy the benefits of having a plan. She said change is inevitable and making the most of change is knowing how to thoughtfully respond to change, rather than just react, and knowing how to use change for the betterment of the City. Research was done on best practices of other communities that had gone through the plan process; the scope was determined; a consultant was selected; and the input gathered was synthesized. The resulting Plan provides the City with nothing less than the power to respond to change but nothing more than a group of ideas. It's a document full of ideas and possibilities, not musts or shalls. She noted the importance of assisters and resisters to the process; resisters brought light to challenges and helped put boundaries on ideas that may have gotten too big. She said the Comprehensive Plan is truly a Madeira document, and it ensures input from the community will continue to be heard.
- Mr. Gehring noted the Plan was not driven by Council but presented to Council from Planning Commission and resident volunteers with input from the community.
- Mr. Hilberg, as a part of the former Planning Commission, thanked Council for moving forward with this project, noting the results far exceeded what that Planning Commission imagined at the time.
- Mr. Moormann expressed pride in the Plan and the process. He said he appreciated the community involvement and noted that two Planning Commission members were seated from the people who showed interested in the Comprehensive Plan process.
- Mr. Mueller said he liked that the process was from the bottom up rather than the top down. He said he fully respects the right to referendum, and if the referendum moves forward and requires a special election, that will be because of the Charter, not because of the referendum committee or Council.
- Ms. Spencer said she has always valued disagreement, and the feedback demonstrates that the dialog will continue as there will be ample opportunities to fine-tune the individual recommendations.

Motion to amend Ordinance 19-01 to the present version made by Mr. Moormann, second by Ms. Adrien. Motion passed by unanimous roll call vote.

Motion to approve Ordinance 19-01: Adoption of the Comprehensive Plan made by Ms. Adrien, second by Mr. Moormann. Motion passed by unanimous roll call vote.

Mayor Theis	yes
Melisa Adrien	yes
Scott Gehring	yes
Chris Hilberg	yes
Doug Moormann	yes
Brian Mueller	yes
Nancy Spencer	yes

XI. NEW BUSINESS

1. Shawnee Run Sidewalk

- Mr. Moeller referenced his Manager's Report and said there is a deteriorated asphalt path in front of 7796 Shawnee Run. It is a building lot and is for sale. Mr. Moeller and Council discussed various options for addressing the issue. It was decided that the Administration would reach out to the property owner and list out options for getting the sidewalk brought to code.

2. Citywide Shred Day
 - Mr. Hilberg asked the Administration to investigate options for a shred day for residents. Mr. Moeller said the Administration would do so.
3. Public Art Project
 - Council discussed the piano that has been placed near the fountain; it will remain there through the end of August. It was noted that many people were playing it at the last Farmer's Market.
4. Farmer's Market
 - Chief Schaefer said the Police Department would be the kid's booth at the Farmer's Market on August 15.

XII. OLD BUSINESS

- None

XIII. EXECUTIVE SESSION

1. Real Estate: Sale/Purchase
2. Pending Litigation

Motion to adjourn into Executive Session for the purpose of discussing pending litigation and to consider the purchase or sale of real estate for public purposes made by Ms. Adrien, second by Ms. Spencer. Motion passed by unanimous roll call vote at 8:54 p.m.

XIV. LITIGATION CLARIFICATION

Motion made by Mr. Hilberg, second by Mr. Gehring, to adjourn Executive Session and return to the regular session at 9:45 p.m.

1. Motion Clarifying City Council's Authorization Regarding the Vexatious Litigator Filing, and Advising of Council's Intentions should that Action Require an Appeal or Refiling
 - Mr. Fox explained the Common Pleas Court issued a decision, which the City still contests, saying the complaint was procedurally in error. Nevertheless and in order to resolve all doubts and to make as clear as possible for the Court and its record, Council is undertaking this motion to make plain for the Court that the past authorization, prior to the commencement of the suit, was in place, and that going forward, Council is also authorizing actions to be taken relative to that case, whether it be an appeal of the Trial Court's decision or a refiling of the Complaint in the Court of Common Pleas or a combination of the two, depending on what the Law Director's office determines to be the best and most expeditious path to resolution.
 - Mayor Theis read the following motion:

"Inasmuch as the Court questioned whether the City of Madeira authorized the initial filing of the vexatious litigator action currently styled as Hamilton County Case No. A1802415, which is pending before the Hamilton County Court of Common Pleas, City Council now **MOVES** as follows:

- City Council **MOVES** to clarify the City did, indeed, direct the Law Director to file Case No. A1802415 on behalf of the City of Madeira, even indicating as much prior

to the filing of the same, with the Hamilton County Court of Common Pleas on or about May 11, 2018; and,

- To the extent ambiguities remain regarding the authority of the Law Director's filing of Case No. A1802415 on the City's behalf (or any subsequent actions undertaken in furtherance of the City's claims in that litigation), City Council **MOVES** to clarify that any and all actions taken by the Law Director in Case No. A1802415 were authorized by the City; and,
- Moreover, should the Court maintain its position that authorization from the City was lacking at the inception of Case No. A1802415 (or should such determination be upheld by the First District Court of Appeals), City Council **MOVES** to clarify that any steps undertaken by the Law Director as of this date with respect to Case No. A1802415 are unambiguously ratified; and,
- City Council **MOVES** to clarify that this Motion was made in response to a specific decision issued by the Court in Case No. A1802415 (a decision which considers neither the authorization provided by City Council in 2018 nor the City Manager's authorization in connection therewith), and, as such, the City does not waive any of its legal arguments before the Court in Case No. A1802415, legal arguments yet to be advanced in Case No. A1802415, or legal arguments to be advanced in any appeal resulting from Case No. A1802415; and,
- Should this Motion be approved, City Council **MOVES** and directs that a written copy of the same be provided to the Court for its consideration in Case No. A1802415; and,
- Finally, should the Court proceed under its previously announced analysis and Case No. A1802415 be dismissed without prejudice, City Council **MOVES** to clarify that the Law Director has the City's authorization to appeal the trial court's decision to the First District Court of Appeals and/or to refile an action to have Mr. Douglas Oppenheimer designated as a vexatious litigator with the Hamilton County Court of Common Pleas as soon as practicable."

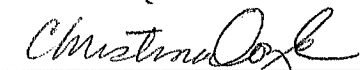
Motion Clarifying City Council's Authorization Regarding the Vexatious Litigator Filing, and Advising of Council's Intentions should that Action Require an Appeal or Refiling made by Mr. Hilberg, second by Ms. Spencer. Motion passed by 6-0-1 roll call vote.

Mayor Theis	yes
Melisa Adrien	yes
Scott Gehring	yes
Chris Hilberg	yes
Doug Moormann	abstain
Brian Mueller	yes
Nancy Spencer	yes

Mr. Moormann said he abstained because he was not a Council member when Council initially authorized the Law Director to move forward with the case. But he said he finds this to be a situation where the Court ruled on a procedural matter and not on the merits of the case, so he is in support of Council going forward and seeking the Court's decision on the merits of the case.

XV. ADJOURNMENT

Motion made by Mr. Gehring, second by Ms. Adrien, to adjourn the regular meeting at 9:53 p.m. Motion passed by unanimous roll call vote.



Christine Doyle, Clerk of Council