

**MINUTES**  
**REGULAR SESSION**  
**WESTERVILLE CITY COUNCIL**  
*Council Chambers, June 19, 2007, 7:00 p.m.*

1. **CALL TO ORDER**

2. **ROLL CALL**

Council met in regular session June 19, 2007 with Council Members, Craig Treneff, Kathy Cocuzzi, William Highfield, Anne Gonzales, Damon E. Wetterauer, Jr., Michael Heyeck, Diane Fosselman, Finance Director John P. Winkel and Staff, Law Director Bruce E. Bailey and Clerk of Council Mary Johnston present.

3. **INVOCATION**

The invocation was given by Retired Reverend Dan Mortinger of Outville Presbyterian Church.

4. **PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was recited.

5. **MINUTES**

The Minutes of the June 5, 2007 Regular Meeting and June 4, 2007 Executive Session were presented for approval.

Mrs. Cocuzzi moved, Mayor Fosselman seconded to approve the Minutes as provided.

Yeas: Mrs. Cocuzzi, Mr. Heyeck, Mayor Fosselman, Mrs. Gonzales, Mr. Treneff Mr. Highfield, Chairman Wetterauer

Nays: None

The motion carried.

6. **CITY MANAGER'S REPORT**

None.

7. **MAYOR'S REPORT**

Mrs. Cocuzzi, on behalf of Mayor Fosselman, issued a Proclamation for Parks and Recreation Month in July 2007 to Recreation Advisory Board members Matthew Whitehead, Eric Busch and Maureen Trimble.

Mayor Fosselman issued a Proclamation for Youth Sports Days on June 27, 2007 to representatives of Westerville Youth Baseball and Softball League, Junior Football League, Westerville LaCrosse Club, Westerville Rugby Club and Westerville Amateur Soccer Association.

Mayor Fosselman issued a Proclamation for Relay for Life Days on June 29 and June 30, 2007 to Relay for Life Honorary Chairperson Curt Jackowski.

8. **REPORT FROM THE MID OHIO REGIONAL PLANNING COMMISSION REPRESENTATIVE**

Mayor Fosselman updated City Council on the activities of the Mid Ohio Regional Planning Commission. Mayor Fosselman stated MORPC was presented with a copy of the Columbus Partnership Benchmarking Central Ohio at their May meeting. Mayor Fosselman stated this report compares an eight county area in Central Ohio to fifteen other metropolitan areas across the country. Mayor Fosselman stated Central Ohio was one of the highest for foreclosures, one of the lowest in percentage of income invested, one of the worst for public transportations, one of the best for traffic congestion, one of the best for library circulations, one of the best for employment growth and transportation, utilities and warehousing. Mayor Fosselman stated in June MOPRC saw a presentation about a program called "Ohio Quick Clear" and their mission statement is

“Committed to Maintaining the Safe and Effective Flow of Traffic during Emergencies as to Prevent Further Damage, Injury or Undo Delay of the Motoring Public”. Mayor Fosselman stated this program is trying to address problems such as secondary accidents. Mayor Fosselman stated the Franklin County Engineer discussed storm water issues and the county will be putting together an NPDES manual for communities to review and model after.

9. **CITIZENS COMMENTS**

None.

10. **LEGISLATION**

a) ***ORDINANCE NO. 07-14, “To Amend Section 961.10 of the Westerville Codified Ordinances, to Provide an Exception to Time Limitation on the Collection of Non-Residential Waste”*** was read for the third time.

Frank Wiseman, Public Service Director, stated a problem arose with the enforcement of Ordinance No. 06-41, Section 961.10 to reduce early morning noise by restricting the hours of commercial trash pick-up. There is a potential for a safety problem when removing the trash from the Westerville Grill because of the need to back onto State Street during rush hour traffic. The city does not wish to create a safety problem when enforcing the time restrictions.

Mrs. Gonzales moved, Mr. Heyeck seconded for the adoption of Ordinance No. 07-14.

Yeas: Mr. Heyeck, Mayor Fosselman, Mrs. Gonzales, Mr. Treneff, Mr. Highfield, Mrs. Cocuzzi, Chairman Wetterauer

Nays: None

The motion carried.

b) ***ORDINANCE NO. 07-15, “An Ordinance Providing for the Issuance and Sale of Bonds in the Maximum Principal Amount of \$17,225,000 for the Purpose of Paying the Costs of Improving the City’s Municipal Electric System by (A) Replacing and Installing Street Lighting, Conduit, and Underground Voltage Cables, Together with all Necessary Appurtenances Thereto and (B) Replacing Regulators, Existing Underground Cable, An Existing Overhead Pole Line with New Poles, Crossarms, and Conductors, Installing a New Substation, Installing Street Lights, New Underground Conduit and a Manhole System, Together with all Necessary Appurtenances Thereto, and Declaring an Emergency”*** was read for the second time.

c) ***ORDINANCE NO. 07-16, “An Ordinance Providing for the Issuance and Sale of Bonds in the Maximum Principal Amount of \$1,165,000 for the Purpose of Improving and Enlarging the City’s Water System by Improving, Repairing, Reconstructing and Replacing Water Lines, Installing New Water Well, and Acquiring Real Estate for Wellfield Development, Use and Protection, Together with all Necessary Appurtenances Thereto, and Declaring an Emergency”*** was read for the second time.

d) ***ORDINANCE NO. 07-17, “An Ordinance Providing for the Issuance and Sale of Bonds in the Maximum Principal Amount of \$24,500,000 for the Purpose of Refunding Bonds Previously Issued by the City for the Purposes of Paying the Costs of (A) Constructing, Equipping and Furnishing Park and Recreational Facilities and Acquiring Real Estate for Such Facilities, (B) Improving and Extending Cleveland Avenue, Between Certain Termini, by Grading, Draining, Curbing and Paving, Constructing a Bridge and Storm and Sanitary Sewers, Installing Water Mains and Lighting Facilities, Acquiring Necessary Real Estate, and Providing all Necessary Work and Appurtenances, and (C) Providing Facility***

***Improvements for the City's Electric Division by the Construction of an Administration Operations Facility, Constructing a Loading Dock and Truck Bay Addition to the Existing Warehouse, Providing Landscaping, Parking, Lighting and all Necessary Work and Appurtenances, and Declaring an Emergency***” was read for the second time.

e) ***ORDINANCE NO. 07-18, “An Ordinance Providing for the Issuance and Sale of Bonds in the Maximum Principal Amount of \$425,000 for the Purpose of Paying the Costs of Constructing Westar Boulevard, by Grading, Paving, and Otherwise Constructing the Same, and Constructing or Installing Curbs, Gutters, Storm Sewer, Water, Lighting, Erosion Control, Conduit and Signage Improvements, Together with all Other Necessary Appurtenances Thereto, and Declaring an Emergency***” was read for the second time.

f) ***ORDINANCE NO. 07-20, “To Provide for the Re-Appropriation of Funds and the Transfer of Funds for the Completion of Municipal Building Improvements and to Authorize and Direct the City Manager to Enter into Purchase Agreements Without Formal Bidding and Advertising, and to Declare an Emergency***” was read for the second time.

g) ***ORDINANCE NO. 07-21, “To Authorize the City Manager to Provide for Adjustments of Annual Fee Amounts and Payments in Lieu of Taxes Arising under Community Reinvestment Area Agreements***” was read for the second time.

h) ***ORDINANCE NO. 07-22, “To Appropriate a 0.391-acre, more or less, Public Utility Easement and Lessor Estates, Owned by Diane C. Brown, located on Sunbury Road in the City of Westerville, County of Franklin, State of Ohio, and to Declare an Emergency***” was read for the first time.

Karl Craven, Planning and Development Director, stated this Ordinance and Ordinance Nos. 07-23 through 07-26 confirms Council's desire to acquire the five remaining permanent easements needed to construct and maintain the proposed Central College Sanitary Sewer Improvements. The Ordinances establish the fair market value of the easements to be acquired. Passages authorizes the City Manager and Law Director to commence eminent domain proceedings if the easements cannot be acquired through a negotiated contract of sale and purchase.

Mrs. Gonzales urged staff to work hard with the property owners for an agreement and to look for an alternative alignment.

Mayor Fosselman stated her expectations are that all issues will be resolved by September.

i) ***ORDINANCE NO. 07-23, “To Appropriate a 0.053-acre, more or less, Public Utility Easement and Lessor Estates, Owned by Diane C. Brown, located on Sunbury Road in the City of Westerville, County of Franklin, State of Ohio, and to Declare an Emergency***” was read for the first time.

See staff report under Ordinance No. 07-22.

j) ***ORDINANCE NO. 07-24, “To Appropriate a 0.052-acre, more or less, Public Utility Easement and Lessor Estates, Owned by Paul E. Robinson, Jr. and Diane B. Robinson, located on Sunbury Road in the City of Westerville, County of Franklin, State of Ohio, and to Declare an Emergency***” was read for the first time.

See staff report under Ordinance No. 07-22.

k) ***ORDINANCE NO. 07-25, “To Appropriate a 0.052-acre, more or less, Public Utility Easement and Lessor Estates, Owned by Etta K. Moor, located on Sunbury Road in the City of Westerville, County of Franklin, State of Ohio, and to Declare an Emergency***” was read for the first time.

See staff report under Ordinance No. 07-22.

l) **ORDINANCE NO. 07-26, “To Appropriate a 0.053-acre, more or less, Public Utility Easement and Lessor Estates, Owned by Paul and Maria Anna Cirolì, located on Sunbury Road in the City of Westerville, County of Franklin, State of Ohio, and to Declare an Emergency”** was read for the first time.

See staff report under Ordinance No. 07-22.

m) **ORDINANCE NO. 07-27, “To Provide for the Supplemental Appropriation of Funds for the Cost of Professional Engineering Services in Connection with the Expansion of the City’s Underground Conduit System and for the Development of a Community Broadband Digital Corridor”** was read for the first time.

Mr. Winkel stated the purpose of this Ordinance is to appropriate funds for engineering services to design the expansion of the City’s underground communication conduit system and the further development of the community broadband digital corridor. Staff is currently validating estimates at approximately \$100,000 and should have a final estimate by the second reading of this Ordinance. The purposes of expanding the underground conduit system are to provide redundancy; ensure that telecommunication and data services are available throughout the community on a competitive and cost effective basis; bring the benefits of new technological services to residents, businesses educational institutions, and government agencies; provide increased access to government information and services; promote growth and economic and social development within the city; and to preserve and protect city infrastructure by minimizing disturbances and limiting inconveniences associated with work conducted in the right-of-way.

Chairman Wetterauer advised staff to be prepared on July 2, 2007 to suspend the rules and have the presentation at that meeting.

n) **ORDINANCE NO. 07-28, “To Provide for the Supplemental Appropriation of Funds Necessary for the Payment of Utility Cost”** was read for the first time.

Jody Stowers, Parks and Recreation Director, stated this Ordinance is to appropriate an additional \$50,000 for natural gas utility services for the Westerville Community Center. Based on projections in 2006, the amount appropriated in the 2007 budget will be not cover utility costs due to price escalations. Staff will continue to monitor the utility cost closely and will have a more accurate year end projection by the third reading in September.

**11. TO HEAR THE APPEAL FILED ON PLANNING COMMISSION’S DECISION IN CASE NO. PC 2007-08 (FOR THE PROPERTY AT 648 NORTH STATE STREET – WHITE CASTLE).**

Mrs. Johnston administered the Oath to those wishing to testify in the Appeal hearing.

Lisa LaMantia, Planner, gave an overview of the development. Mrs. LaMantia stated Planning Commission’s decision on this application was to close the drive-thru between the hours of 12:00 a.m. to 5:00 a.m. The restaurant portion itself would continue to operate on a 24-hour basis. The city did receive an Appeal on Planning Commission’s decision requesting that both the restaurant and drive-thru be closed between the hours of 12:00 a.m. and 5:00 a.m.

Speaking in Favor of Appeal:

Wendell Farris, 5460 Spruce Lane, stated he is not opposed so much to White Castle but what he is really opposed to is a 24/7 operation whether it be a White Castle or McDonald’s or Wendy’s or any of those types of businesses. Mr. Farris stated he has not seen the plan and doesn’t believe you can just put brick on a building and that automatically turns it into something else. Mr. Farris stated some of his other major concerns are the increased traffic and noise, not only during the day but at all hours of the night. Mr. Farris stated it could lead to the potential increase in crime in that area, that’s not White Castle, it’s just the nature of the beast with a 24/7 operation. Mr. Farris stated his feeling is, although he is not sure if it’s a foregone conclusion that this is going to be in that location, but what he would ask of Council is to reconsider where the location for a White Castle should be. Mr. Farris stated he would like to see one on that end of town, in

the Polaris and State street area would be more appropriate. It would pull out of his residential area of Blue Spruce and Ruckmoor area. Mr. Farris stated if the case is it is going to be there then he asks Council to severely limit the hours of operation so the residents are not having to deal with that at all hours of the night.

John Shumate, Shumate Development, thanked the Council for allowing him to speak regarding the property. Mr. Shumate stated in 1975 he built his first home and had his first son. Mr. Shumate stated 30 years later and about 3,000 units and office complexes and other things that he has developed, what they put on State Street is the crown. Mr. Shumate stated even though they had to develop all that in years, he still has to fold his clothes because his wife did not fold them properly when they came out of the dryer. Mr. Shumate stated, as someone who lives in Westerville and has office complex in Westerville, he feels this is his home where they can go do everything at once. Mr. Shumate stated he is real excited about the faith the Council has put in for street improvements and things that Council did years ago to put in motion to have, not only Polaris and that quadrant, but also State Street all kind of jell together for something in the future. Mr. Shumate stated not only with this project but we're slating with Council's blessing in the future, two more of these projects, 55 years of age and older. Mr. Shumate stated although he thinks White Castle is a great company and a great Ohio company, and the zoning may be acceptable in a sense for that type of establishment. Mr. Shumate stated he doesn't think the total establishment for the hours is suitable for the long term growth of the area. Mr. Shumate stated there is almost an imaginary line on Maxtown Road, with no residential and there are restaurants that almost border Maxtown Road is acceptable to people with traffic and very typical. Mr. Shumate stated right after Max and Erma's is almost a zone that is not mapped out on a map but almost invisible where it has a different flavor. Mr. Shumate stated he feels a sit down restaurant with typical restricted hours of operation would have been a better suit. Maybe there wasn't one of those that came forth but he thought maybe, in time, which would come to play. Mr. Shumate stated nevertheless, putting a sit down restaurant it goes into a fast food drive thru which changes the characteristics the, what he calls, an imaginary line. Mr. Shumate stated even though Giant Eagle is 24/7 it does sit back from State Street so therefore poses hardly any noise and there's not a lot of traffic at night. Walgreen's does not have kids hanging around at the store and Max and Erma's closes down early at night. Mr. Shumate stated he thinks the rest of the corridor kind of changes spiritually what's going on in the area. Mr. Shumate stated when Planning Commission turned down the whole thing because they would not agree on the operation, he was assuming that was not only the drive thru but also the operation of the restaurant so he left the Planning Commission meeting because everything seemed to be finished. Mr. Shumate stated White Castle came back up and stated that this is what they want and he wasn't there at the time. Mr. Shumate stated he is aware that people like White Castle. Mr. Shumate stated he feels it is an attraction to vehicles that when nothing is open in that quadrant, are going to come to that area. Mr. Shumate stated he feels if you like other restaurants, if you want to eat there you usually go back at the right hour when it's open and still eat at that restaurant. Mr. Shumate stated with the complex he is building across the street and the time and effort they have put in to it and the long term thing that would better to have it just closed at that time and open back up at 5:00 a.m.

Speaking in Opposition of Appeal:

Catherine Cunningham, Attorney with Plank and Brahm, representing White Castle, stated they are here because they actually received an approval from Planning Commission to allow a White Castle at this particular location which is part of the Northridge Crossing plan commercial center. When White Castle came before Planning Commission this was one of the out lots in the planned commercial center and as part of the plan commercial zoning text the text specifically mentioned fast food restaurants. The text says that fast food restaurants would be not permitted at the corner of State and Maxtown Roads but there would be a maximum amount of two fast food restaurants on the outlot parcels in this zoning classification and they would be limited to State Street. Ms. Cunningham stated this is fast food restaurants at this location are contemplated by Council at the time the development text for this zoning was originally done. What Planning Commission had before it was an application for a fast food restaurant in a location that was identified in the zoning text as a location that contemplated that fast food restaurants would be located. Ms. Cunningham stated the application was before Planning Commission for two meetings and during the first meeting they

received ideas from Planning Commission about changes to the site plan which are not before Council as issues. Some of those changes, specifically related to a drive thru operation and a fast food restaurant and after the first meeting, substantial changes and meetings with staff, White Castle went back to the Planning Commission for a second meeting in May and ultimately received an approval from Planning Commission. The vote from Planning Commission was 4 to 3 on the approval although the Minutes note that one of the members who voted no, voted no because of the architectural design of the structure and not because of the hours of operation. Ms. Cunningham stated there were two no's that didn't identify in the Minutes what their no's were for but one no specifically identified the battlement of the trademark of White Castle that he was not particularly in favor of. Ms. Cunningham stated White Castle comes before Council with an approval from Planning Commission and request that Council affirm the approval of Planning Commission and not grant the Appeal. There's nothing that has been presented today that was not presented to Planning Commission and not considered by Planning Commission in terms of the fact of the nature of a White Castle restaurant, the nature of the operations of the White Castle restaurant and specifically the nature of the drive thru operation of the fast food restaurant. Ms. Cunningham stated there have been discussions about hours of operation and how that might impact people and when Planning Commission looked at the conditional use permit and frankly when a conditional use permit is viewed the entire area is taken into consideration not just what's across the street but also what is north and south and west of this location. In this planned commercial district, there are no limits of hours of operation of any operation in the district and while there may be as practical matter, Max and Erma's that closes at a particular time and a Get and Go that chooses to close, there is no zoning requirement that they do so. Ms. Cunningham stated so what happened when the Planning Commission considered everything in the whole region, what was across the street and developing across the street, but when the zoning text was approved by Council initially, there was residential across the street. It was zoned residential and there were single family residences there at the time Council anticipated the potential of fast food restaurants. Ms. Cunningham stated there has been some discussion about looking forward and not back and various rights but here you have a property owner who has been before Council, who has particular expectations from their zoning as well expectations of neighbors and in this instance in the conditional use permit, the things that have to be considered certainly under the city's zoning resolution are not just the opponents but also the rights of property owner here and their reasonable expectations given the zoning that was previously approved by Council. Ms. Cunningham stated the applicant did make compromises all along the way and they did compromise as to design. They did compromise as to limitations of hours of operations through the drive thru and when they do that they make it into a sit down restaurant from midnight to five in the morning with the limitations which would be a permitted use in the district because there is no restriction on sit down restaurants in the district only on any restaurant other than fast food restaurants with a potential for conditional use. Ms. Cunningham stated the applicant would request that Council acknowledge the hard work of Planning Commission and the applicant and affirm what Planning Commission did in terms of limiting the hours of operation, having amendments to site plan to accommodate the drive thru buffer and protect the neighbors across the street and with all do respect Ms. Cunningham appreciates Mr. Farris' concerns, he certainly is a property owner and neighbor of the area but he comes with a concern of never having seen the plan, never having appeared before Planning Commission or participated in the difficult negotiations that often go through with these and they would appreciate that if Council would affirm what Planning Commission did and acknowledge their hard work and hard work of staff in approving this conditional use permit with the limitation of the hours of operations as approved.

Mrs. Gonzales stated she was not on Council when that development north of there was approved. Mrs. Gonzales stated had she been on Council she would not have approved any operations that are 24/7. Mrs. Gonzales stated she is not in favor of any operations that are 24/7 so close to the residential that is across the street. Mrs. Gonzales stated Giant Eagle is far removed and a whole different type of animal. It is not a fast food restaurant. Mrs. Gonzales stated she does not have a problem with having two fast food restaurants on State Street. Mrs. Gonzales stated she thinks the city is permitting White Castle to have a fast food on South State Street. Mrs. Gonzales stated she sees this as a conditional use that the city should put reasonable conditions on. Mrs. Gonzales stated that would be time restraints and she would like to impose some time

restraints on the conditional use. Mrs. Gonzales stated she would like to see is to look at closing the restaurant from midnight to five in the morning along with the drive thru. Mrs. Gonzales stated Ms. Cunningham brought up that noise wasn't going to be a concern or issue and she wished that the applicant had proven that to her because all she is going on is their word yet the Planning Commission meeting Minutes show some numbers being thrown out and Mrs. Gonzales really wishes the applicant would have had a chance to prove that to her. Mrs. Gonzales stated she did have a chance to review the meeting Minutes and did take a good look at the plans.

Mr. Treneff stated he voted against this application at the Planning Commission meeting. Mr. Treneff stated he doesn't think the zoning text reference is dispositive of this while it does permit two fast food restaurants on that side of the development it doesn't give carte blanc that any fast food development can go in which would be a conditional use by its very nature without any reasonable restrictions necessary being in place by the city. Mr. Treneff stated what the question is can the city impose reasonable restrictions on this conditional use and if the city can should the city and what should they be. Mr. Treneff stated there is a reason why the city has conditional uses as opposed to permitted uses in the code and there's a reason why fast food restaurants is a conditional use and not a permitted use because it generates issues that are beyond the typical for similar kinds of operations primarily noise and traffic and when you get into a 24 hour issue with a fast food then you are magnifying the concerns that the code has typically with fast food operations. That is why it is a conditional use. Mr. Treneff stated the city can get beyond this point that the city is allowed to do it because the text says allows it. That doesn't dispose of the issue. Mr. Treneff stated the next step is to put it in the last remaining out parcel at the shopping center which happens to be towards the southern end of the shopping center which happens to be adjacent to a new residential development that's underway that the city is very proud of and will be very proud of. Mr. Treneff stated the mantra from the Planning Commission was that the west side of the street is intended to retain a residential character and that the city had consciently attempted to preserve that on the west side of the street. That is why there is a residential development across from the shopping center and not another shopping center for example. Mr. Treneff stated does this fast food restaurant create an issue for that residential development that would allow the city to impose some kind of reasonable restriction and he felt it does. Mr. Treneff stated it's a 24 hour operation as Planning Commission voted for it but the drive thru is not. Mr. Treneff stated he does think the drive thru personally would be the greater of the two concerns although the applicant may not necessarily see that but they may see it the other way around. Mr. Treneff stated it still is a 24/7 operation. Mr. Treneff stated the city ought to give the residential side of this equation a break between the night and 5 a.m. without noise and the only time the residents in the Shumate Development will get some relief from the traffic on State Street. Mr. Treneff stated the rest of the center on the west side isn't aimed at creating that kind of concern that he has, that a conditional use for a fast food does. There are no other 24 hour operations other than the grocery store which is significantly recessed back not is it the kind of thing where he thinks its inclined to create the kind of traffic in a smaller space that will get potentially with White Castle. White Castle should be successful at that location but there will be some reality to this. Mr. Treneff stated he thinks the package is such while this building and site plan if it were up on the north side of the development or facing Maxtown Road that is one thing but on the southern site it just creates the potential to create noise and traffic issues for the adjacent residential area that he thinks are conditional use provisions of the code and will be creating a problem down the line that Council will be hearing about.

Mr. Heyeck stated this parcel has a long history and he was on Council when it was approved. Mr. Heyeck stated he believes Council role is not to be Planning Commission but to hear the appeal of the Planning Commission decision. Mr. Heyeck stated Council should look at the procedures and not the battlements and understand that this parcel has a 24/7 hour operation. It does not restrict the 24/7 operations and has a State Route on the front so, he believes, all the knowledge of this site was known when things were built. Mr. Heyeck stated he believes Council is here to talk about the procedures and processes and not whether the city likes the particular outcome of Planning Commission's decision.

Mrs. Cocuzzi congratulated Mr. Shumate for the property and is looking forward to the ones that will be coming again. Mrs. Cocuzzi stated she has a problem with this issue because the zoning was in place prior to the building of Shumate's development. Mrs. Cocuzzi stated while some people say they didn't really mean fast food people, the city did say fast food was allowed there. Mrs. Cocuzzi stated a couple of people were talking about how there's going to be all of the young people out and wondered about curfew. Mrs. Cocuzzi stated only adults should be at the restaurant during the late night hours. Mrs. Cocuzzi stated there are many college students and workers who work the late shifts and many of them would like to be able to eat. Mrs. Cocuzzi stated she believes the city's police force is very responsive and pro active and felt there was an issue or potential issue they would patrol it. Mrs. Cocuzzi stated she feels it is wrong to assume all of the traffic will go on State Street; many motorists use other streets. Mrs. Cocuzzi stated she is inclined to support the decision the way it was.

Mr. Highfield stated he attended the Planning Commission meeting and the resident who does not live in the city did not realize what was going in that development. Mr. Highfield stated the Westerville North plan puts commercial on the west side of State Street from County Line north or would at least allow that. Mr. Highfield stated he hoped that Mr. Shumate was aware of that also; that it is to be commercial. Mr. Highfield stated he didn't think there were any misgivings about that at all. Mr. Highfield stated to talk about a 55 year old and older property that the people will be disturbed by White Castle and he might be one of the minority of that because regardless of whatever he likes White Castle or not, it is also from a former employment that it was the only place around that was ever open all night. Mr. Highfield stated he stopped up there in the area and sat there and listened and at midnight the trucks were starting to back in to Giant Eagle and no one is restricting them. Mr. Highfield stated the loudest noise he picked up there was people down at Bank One closing the night depository which he assumes is the nearby restaurants. Mr. Highfield stated he thinks Planning Commission worked very hard on getting the decision that they made, made White Castle change the design of the building. Is the design perfect, no, and you can still tell it's a White Castle and that was the goal. Mr. Highfield stated he doesn't believe that being on a State Route will limit noise. Mr. Highfield stated he has no reason try to decide against Planning Commission and there has been nothing presented this evening to change his opinion. The only thing is the drive thru hours are more restrictive than the other establishments in the area. Mr. Highfield stated the other establishments close during the late night hours for safety reasons.

Mr. Heyeck moved, Mr. Highfield seconded to overturn Planning Commission's decision in Case No. PC 2007-08 (for the property at 648 North State Street – White Castle).

Yeas: Mayor Fosselman, Mrs. Gonzales, Mr. Treneff

Nays: Mr. Highfield, Mrs. Cocuzzi, Mr. Heyeck, Chairman Wetterauer

The motion failed. The Appeal was not granted.

**12. TO AUTHORIZE AND DIRECT THE CITY MANAGER AND POLICE CHIEF TO FILE APPLICATION WITH THE OHIO ATTORNEY GENERAL'S OFFICE FOR THE DARE GRANT PROGRAM.**

Police Chief Joe Morbitzer stated the purpose of this request is to seek permission to apply for the Drug Abuse Resistance Education (D.A.R.E) grant administered by the Ohio Attorney General's Office. The grant provides for up to 50% of the total salary of a certified D.A.R.E. officer with a 50% local funding match. This grant is awarded for a one-year period. This program is very beneficial to the children of the community.

Mayor Fosselman moved, Mr. Treneff seconded to authorize and direct the City Manager and Police Chief to file application with the Ohio Attorney General's Office for the DARE Grant Program.



Yeas: Mrs. Gonzales, Mr. Treneff, Mr. Highfield, Mrs. Cocuzzi, Mr. Heyeck, Mayor Fosselman, Chairman Wetterauer

Nays: None

The motion carried.

**13. TO AUTHORIZE AND DIRECT THE CITY MANAGER TO PURCHASE STORAGE AREA NETWORK HARDWARE FROM XIOTECH CORPORATION THROUGH STATE OF OHIO CONTRACT #533463-1.**

Todd Jackson, Information Systems Manager, stated this request will enable the SAN to be expanded by two terabytes enabling more servers and associated applications to be migrated to the more stable and redundant environment offered by a SAN compared to resident storage on services. Since January, 2006 hard drives are no longer purchased for individual servers. Managing storage using a SAN enables the city to manage storage space more efficiently and forecast future storage needs more effectively. Contract Award Amount: \$22,483.00.

Mrs. Cocuzzi commended staff for the cooperation between departments to reduce the cost and also for their initiative to find a competitive source and reduce the overall cost.

Mrs. Gonzales moved, Mr. Heyeck seconded to authorize and direct the City Manager to purchase storage area network hardware from Xiotech Corporation through State of Ohio Contract #533463-1.

Yeas: Mr. Treneff, Mr. Highfield, Mrs. Cocuzzi, Mr. Heyeck, Mayor Fosselman, Mrs. Gonzales, Chairman Wetterauer

Nays: None

The motion carried.

**14. TO AUTHORIZE AND DIRECT THE CITY MANAGER TO PURCHASE COMPUTER HARDWARE FROM MCPC COMPUTER PRODUCTS AND CONSULTING AND WAIVE COMPETITIVE BIDDING AND NOTICE REQUIREMENTS.**

Mr. Jackson stated staff has prepared the rugged laptop replacement purchase for Council consideration. This request contains twenty seven Toughbook laptops, three Toughbook tablets and two CD-RW/DVD-ROM combo optical drives. This purchase represents the remaining computer units contained in the 2007 Budget Request. Contract Award Amount: \$117,495.00.

Mr. Treneff moved, Mrs. Gonzales seconded to authorize and direct the City Manager to purchase computer hardware from MCPC Computer Products and Consulting and waive competitive bidding and notice requirements.

Yeas: Mr. Highfield, Mrs. Cocuzzi, Mr. Heyeck, Mayor Fosselman, Mrs. Gonzales, Mr. Treneff, Chairman Wetterauer

Nays: None

The motion carried.

**15. TO AWARD THE BID FOR THE ANNEHURST VILLAGE CIRCUIT 13 OVERHEAD POLE LINE REPLACEMENT PROJECT PHASE 3 TO NEW RIVER ELECTRICAL CORPORATION.**

Mike Pope, Electric Engineering Manager, stated three bids were ultimately received at the official bid opening held on June 11, 2007. This project involves replacing existing wood poles, overhead conductors, transformers and related items which are reaching the end of their useful life. This project is scheduled to being in July 2007 with a contract completion date of May 16, 2008.

Contract Award Amount: \$433,061.27 plus a 7% construction contingency - \$30,314.29 totaling \$463,375.56

Mrs. Gonzales moved, Mayor Fosselman seconded to award the bid for the Annehurst Village Circuit 13 Overhead Pole Line Replacement Project Phase 3 to New River Electrical Corporation.

Yeas: Mrs. Cocuzzi, Mayor Fosselman, Mrs. Gonzales, Mr. Treneff, Mr. Highfield, Chairman Wetterauer

Nays: None

Abstain: Mr. Heyeck due to a conflict of interest.

The motion carried.

**20. ADDITIONAL BUSINESS**

Andy Boatright, Electric Utility Manager, informed Council on peak energy use in the Electric Division and asked everyone to conserve energy during the summer months.

Dick Lorenz, Water Utility Manager, explained the water usage and the city's watering program and stated citizens are to water their lawns on odd/even days based on their house number. Mr. Heyeck asked staff to make sure this information is shared with both residents and businesses.

Fire Chief Bernie Ingles and Police Chief Joe Morbitzer invited everyone to attend the 4<sup>th</sup> Friday event on June 22, 2007 and the theme this month is Safety. The Police Division and Fire Division, along with other agencies, will be on hand to talk to citizens about safety and provide information.

**21. COUNCIL COMMENTS**

Mr. Highfield stated the loss of nine firefighters in Charleston, South Carolina was a very tragic event.

Mrs. Cocuzzi encouraged citizens to support the Relay for Life event. Mrs. Cocuzzi congratulated the Parks and Recreation Department for holding parties in the city's parks and encouraged citizens to sign up. Mrs. Cocuzzi discussed the loss of firefighters and the effect this tragedy has on a community. Mrs. Cocuzzi reminded everyone of the fundraising efforts and construction of a firefighter memorial in Westerville.

Mr. Treneff stated he has been studying the last revisions to the Five Year Plan. Mr. Treneff stated the city finances for this year is on track to have a 2.5% increase in municipal income tax collections. Mr. Treneff stated the bad news is if projected out through the end of this fiscal year and into 2010, the fiscal crisis is still a part of the city's fiscal landscape for the future. Mr. Treneff stated this is a concern and something the city can not ignore.

Mrs. Gonzales stated Highlands Pool is open for the season and memberships are still available. Mrs. Gonzales announced Wessie Fest will be held on June 23, 2007 at Otterbein Lake. Mrs. Gonzales asked staff to review current Ordinances on PODS and dumpsters in residential neighborhoods.

Mr. Heyeck asked staff if Council would be receiving data for the Daleview/Fairdale, Hillsdowne prior to the July 2, 2007 meeting so Council can ask questions. Mr. Craven stated the data will be distributed to Council

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on Friday. Mr. Heyeck asked residents to consider a run for City Council this fall. Petitions to run for City Council are due in August and information is available at the Franklin County Board of Elections. Mr. Heyeck stated there has to be a date certain for the property on Africa Road and County Line Road.

Mayor Fosselman thanked the Westerville Veterans of Foreign Wars for the Flag Retirement Ceremony on June 14, 2007. Mayor Fosselman reminded citizens of the Farmer's Market held on Wednesdays in the Uptown District. Mayor Fosselman announced the Wessie Fest event on June 23, 2007 at Otterbein Lake and encouraged everyone to attend.

Chairman Wetterauer stated an explanation on the appeal vote is appropriate at this time. Chairman Wetterauer stated residents knew of the commercial setting and asked residents to express their concerns before the zoning takes place. Chairman Wetterauer stated Council makes a big mistake when backing out of a commitment that was made. Chairman Wetterauer stated to change something after the fact would not be fair to those who made the investment. Chairman Wetterauer gave a brief update on the search for a new City Manager.

17. ADJOURNMENT.

Mr. Highfield moved, Mr. Heyeck seconded to adjourn.

Yeas: Mrs. Gonzales, Mayor Fosselman, Mr. Heyeck, Mrs. Cocuzzi, Mr. Highfield, Mr. Treneff, Chairman Wetterauer

Nays: None

The motion carried.

The meeting adjourned at 8:56 p.m.

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Mary J. Johnston, MMC  
Clerk of Council

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Damon E. Wetterauer, Jr.  
Chair of Council